

**Meeting of the Central Valley Flood Protection Board
February 26, 2016**

Staff Report

**United States Army Corps of Engineers
Lower San Joaquin River Feasibility Study (LSJRFS)**

1.0 – ITEM

Consider approval of Resolution 2016-03 to:

1. Approve a Letter of Support, from the Central Valley Flood Protection Board (CVFPB) to the U.S. Army Corps of Engineers (USACE), indicating support for the recommended plan.
2. Approve a Self-Certification of Financial Capability, from the CVFPB to the USACE, indicating financial capability to satisfy the obligations for the study.
3. Delegate to the Executive Officer the authority to sign the Letter of Support and Self-Certification of Financial Capability in substantially the forms submitted.

2.0 – SPONSORS

Federal: U.S. Army Corps of Engineers (USACE)
State: Central Valley Flood Protection Board (CVFPB)
Local: San Joaquin Area Flood Control Agency (SJAFCA)

3.0 – PROJECT LOCATION AND STUDY AREA

The study area for the LSJRFS is located along the lower (northern) portion of the San Joaquin River system in the Central Valley of California.

The study area includes the mainstem of the San Joaquin River from the Mariposa Bypass downstream to the City of Stockton. The study area also includes the distributary channels of the San Joaquin River in the southernmost reaches of the Delta: Paradise Cut and Old River, and as far north as Tracy Boulevard, Middle River, and Victoria Canal. Based on coordination with local interests along the San Joaquin River, the study area for the LSJRFS initially included the Littlejohns Creek and Farmington Dam areas southeast of Stockton, Lathrop and Manteca; the City of Stockton extending from the Calaveras River, Mormon Slough, and Bear Creek; and tributaries north of Stockton.

During scoping for the study, two potential sponsors were identified, the SJAFCA and the CVFPB. This focused the study area to Stockton, Lathrop, Manteca, and the surrounding urbanizing area (Attachment A). The reduced study area encompasses 305 square miles including the aforementioned incorporated areas, as well as unincorporated portions of San Joaquin County.

During the plan formulation process, improvement measures to Bear Creek were screened out because the projected benefits did not appear to exceed the costs. Other developing areas of west Stockton (Atlas Tract, Shima Tract, Wright Elmwood Tract) were screened out of the study at the same time due to USACE concerns with Executive Order 11988 (EO 11988). This meant that approximately 15,000 acres of urban, urbanizing, and agricultural lands were screened out due to lack of federal interest and concerns with undeveloped areas. The remaining study area was divided into three separable elements (North Stockton, Central Stockton and Reclamation District 17) (Attachment A). The separable elements are considered to be hydraulically separate, meaning that each area could have unique stand-alone solutions or alternatives proposed that would have no flood risk effect on adjacent areas. In Attachment A, project levees (green lines) are USACE project levees. Non-project levees (purple lines) are not currently included in a Federal project but could be in the future. The gray line indicates the focused study area boundary.

4.0 – PROJECT DESCRIPTION

The purpose of the LSJRFS is to investigate and determine the extent of Federal interest in a range of alternative plans designed to reduce the risk of flooding in the Cities of Stockton, Lathrop, Manteca and surrounding urbanizing areas. The overall purpose of the proposed action under The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) is to reduce flood risk to urban and urbanizing parts of the study area.

The States' objectives are; to meet the requirements of California Senate Bill (SB) 5 of 2007, the Central Valley Flood Improvement Act, to achieve a 200-year level of protection for the urban and urbanizing areas, to ensure the State's interests are met in implementing the State Systemwide Investment Approach as envisioned in the 2012 Central Valley Flood Protection Plan, identify and evaluate flood risk reduction alternatives and to determine an implementable plan, in cooperation with USACE, to reduce the risk to people, property and infrastructure within the study area.

This is an integrated Final Feasibility Report/Environmental Impact Statement/Environmental Impact Report (FR/EIS/EIR). This final report is identified as an "Interim" document to acknowledge that the proposed project will not address all water resource problems within the authorized study area. This terminology signals to Congress that there may be additional Federal interest within the study area for future studies or projects to address water resource needs.

The report describes the planning process and the analyses used to identify the Recommended Plan (RP). This FR/EIS/EIR: (1) describes the risk of flooding in the Cities of Stockton, Lathrop, Manteca and surrounding unincorporated areas; (2) evaluates a range of alternatives to reduce flood risk, including potential environmental impacts; (3) describes measures to minimize or mitigate for potential environmental impacts; (4) identifies a RP for implementation; (5) describes coordination, consultation, and public involvement for the study; and (6) describes the status of compliance with Federal and State laws, Executive Orders, and other requirements.

Analysis of the alternatives for each area was conducted by using a modification of the Parametric Cost Estimation Tool (PCET) developed for the Sutter Basin Feasibility Study by URS, Inc., which has been shown to be a good estimator of cost for proposed levee repairs or construction. Potential environmental mitigation costs for each reach were included in the estimates, as well as potential real estate acquisition costs for landside right-of-way or easement from the existing levee landside toe. This allowed use of inventory data for the areas, including population, number of structures, and counts of critical infrastructure for comparisons. Critical infrastructure is defined as public structures where any risk of flooding is too great, such as hospitals, nursing homes, jails, fire and police stations, and schools. Residual flood plains were modeled to determine effect of the alternatives.

Using the information described above, USACE and the sponsors determined the annual and net benefits effectively represented economic performance of an alternative. Life safety or the ability of an alternative to reduce risk to population from residual flood damages was ranked on a scale ranging from poor to excellent. Alternatives were briefly analyzed relative to compliance with EO 11988, Flood Plain Management, and the North and Central Stockton areas were preliminarily determined to have met the intent of EO 11988 due to the built-out nature of the areas; Reclamation District 17 (RD 17) has planned development which makes it difficult to comply with the EO 11988 guidance; Mormon Channel meets goals of EO 11988 through the ecosystem benefits that could be realized.

The team used existing information to evaluate the economic benefits of the Paradise Cut setback alternatives. A series of incremental improvements were evaluated and modeled by MBK Engineers for the River Islands development project (MBK, 2008). The observed decrease in efficiency as the project size increases is consistent with the hydraulic limitations presented by the downstream stage boundary being within the tidal region of San Joaquin Delta. To allow for development of a reasonable range of alternatives to be carried forward into a focused array, the two alternatives for each area that maximized net benefits were carried forward. For RD 17, only one alternative, RD17-E, was shown to have positive net benefits and provide reduced risk. Of the bypass alternatives, Mormon Channel has positive net benefits and was carried forward. The Paradise Cut Bypass alternative is not cost effective and there are concerns about downstream impacts of widening the bypass. Therefore, it was not carried forward.

A Value Engineering study in compliance with Engineer Regulation 11-1-321 was held July 22 to 26, 2013. USACE and the sponsors used the initial alternatives to develop composite alternatives that would be analyzed to eventually identify a Recommended Plan. After preliminary screening efforts reduced the focused study area to the North and Central Stockton and RD17 areas, three separate final alternative plans were formulated and analyzed for federal policy compliance, cost and net benefits. Each alternative was analyzed with and without RD17. The three alternatives that included RD17 flood risk reduction (FRR) improvements were ultimately also screened out based on non-compliance with federal policy (EO 11988). Of the remaining alternatives, the one consistent with USACE National Economic Development (NED) was selected based on the maximum net benefits. The NED and RP were identified as Alternative 7a. This RP includes FRR measures within the North and Central Stockton areas (see Attachment B for Alternative 7a). Proposed improvements include new levees, levee raises and geometric repairs, seepage cutoff walls, rock erosion protection, two gated closure structures (on Fourteenmile Slough and Smith Canal), seismic fixes and maintenance easements. USACE estimates the cost of this project to be approximately \$989 Million. The RP provides a benefit to cost ratio of 8.3 to 1.0, annual flood damage reduction benefits of \$283,000,000 and reduces flood risk to 264,000 residents.

5.0 – PROJECT BACKGROUND

The existing levee system within the study area protects over 71,000 acres of mixed-use land with a current population estimated at 264,000 residents and an estimated \$21 billion in damageable property. The study area has a history of flooding events, with major events occurring three times since the 1950's. The 1955 event had the highest flows recorded on the Calaveras River at Bellota, and approximately 1,500 acres of Stockton were inundated to depths of six feet for as long as eight days. The 1958 event inundated approximately 8,500 acres between Bellota and the Diverting Canal with flood waters up to two feet deep, and inundation durations from two to ten days. The 1997 event resulted in the evacuation of the Weston Ranch area of Stockton at the north end of RD 17. While the 1997 event did not directly damage areas of Stockton, Lathrop, or Manteca, there were approximately 1,842 residences and businesses affected in San Joaquin and Stanislaus Counties. There were also significant flood fighting efforts conducted during the 1997 event in RDs 404 and 17. Between the two RDs, there were 37 sites flood-fought. Damages in San Joaquin County for the 1997 event were estimated to be near \$80 million.

As the Federal sponsor, the USACE entered into a two-way Feasibility Cost Sharing Agreement (FCSA) for LSJRFS with SJAFCA in February 2009. The Board was added as a Non-Federal sponsor in FCSA Amendment No. 1 in June 2010.

6.0 – AUTHORIZATIONS

Federal: Water Resources Development Act (WRDA) 1986 (Section 905(b))
Flood Control Act of 1936 (Public Law [PL] 74-738) (Sections 2 and 6),
amended by the Flood Control Act of 1938 (PL 75-761)

State: California Water Code Sections 8615 and 12616

7.0 – FUNDING STATUS

At the same time the CVFPB became a Non-Federal Sponsor and signatory to the FCSA, the Board also executed a Local Feasibility Cost-Sharing Agreement (LFCSA) with SJAFCA. This LFCSA specified the cost sharing obligations between the two Non-federal Sponsors. The FCSA specifies a 50/50 cost-share between the federal government and the Non-federal Sponsors. The LFCSA further specifies a 50/50 cost-share of the non-federal portion between the Board and SJAFCA, with each party being responsible for 25% of the Total Study Cost. Currently, the CVFPB has contributed \$2,462,824 of its \$2,627,213 obligation.

8.0 – CURRENT ACTIVITIES

The statuses of the project are described below.

- Final Report Submittal Milestone (March 2016). The Division Engineer's Transmittal Letter will provide the submittal package to USACE Headquarters for review and will enclose the Final Report and EIS along with other required documents, including the Boards' Letter of Support and Self-Certification.
- Civil Works Review Board is scheduled for July 8, 2016. At the Civil Works Review Board (CWRB), Major Subordinate Commanders and District Commanders present the results of their water resources development studies and the recommendations contained in decision documents for projects that require authorization by the United States Congress. The CWRB briefing will serve as the corporate checkpoint that the final decision report and NEPA document are ready for State and Agency Review as required by the Flood Control Act of 1944, as amended.
- A Signed Chief's Report is projected for November 2016. This is the Assistant Secretary of the Army's (ASA) approval of the Feasibility Study.

9.0 – STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution 2016-03 to:

Approve: a Letter of Support, from the Central Valley Flood Protection Board (CVFPB) to the U.S. Army Corps of Engineers (USACE), indicating support for the recommended plan.

Approve: a Self-Certification of Financial Capability, from the CVFPB to the USACE, indicating financial capability to satisfy the obligations for the study.

Delegate: to the Executive Officer the authority to sign the Letter of Support and Self-Certification of Financial Capability in substantially the forms submitted.

10.0 – LIST OF ATTACHMENTS

A – Project Map

B – Alternative 7a – Recommended Plan

C – Board Resolution 2016-03

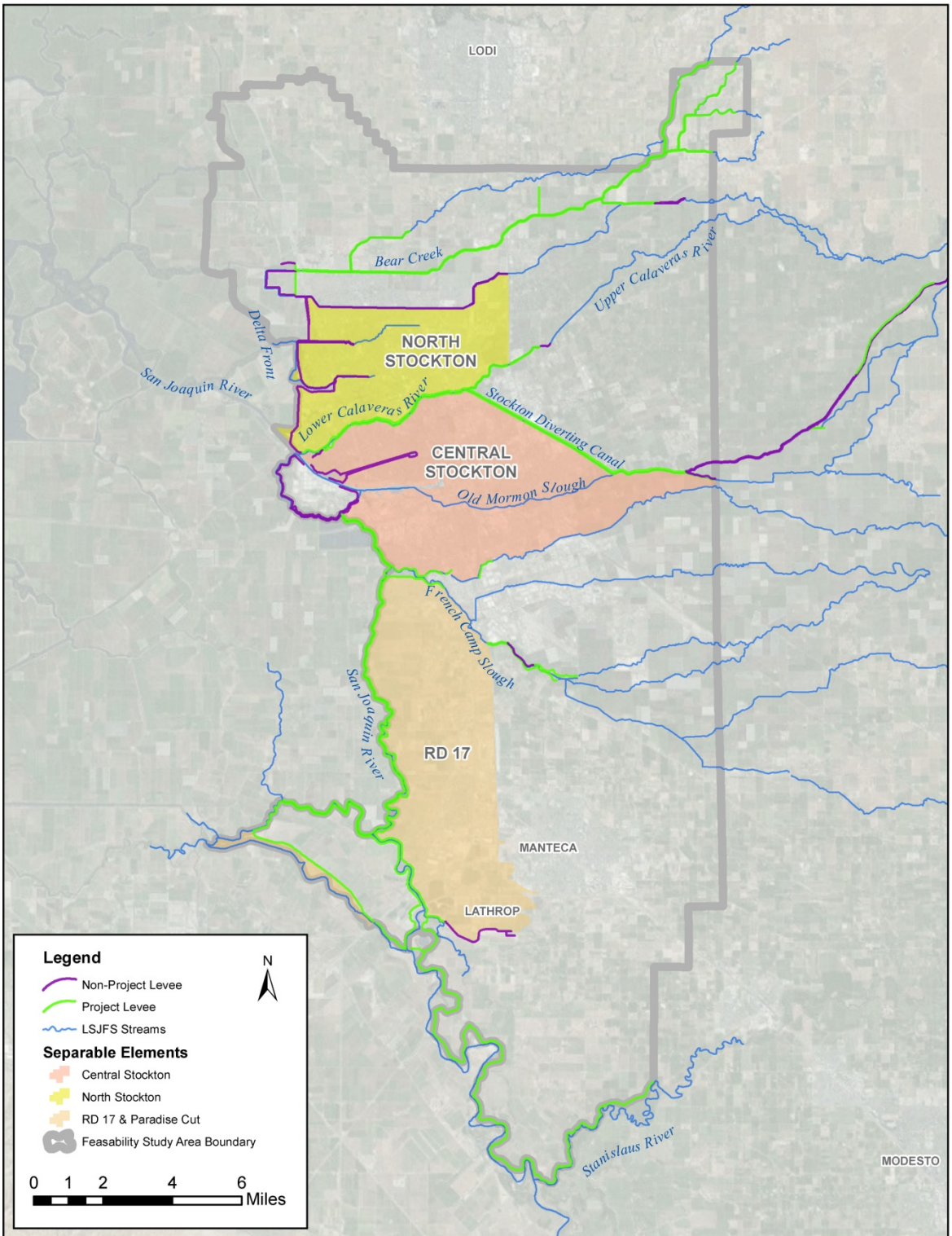
D – Letter of Support

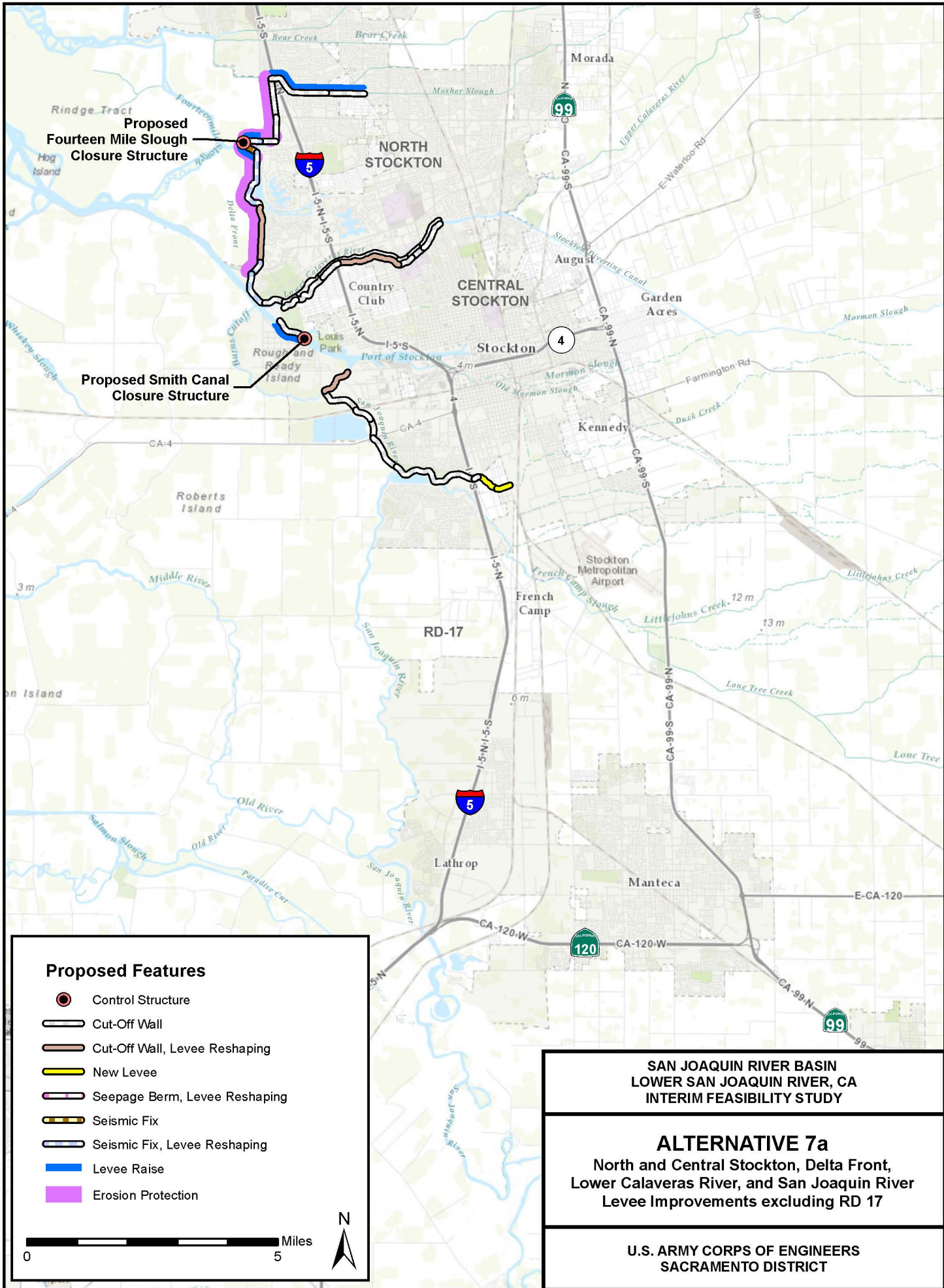
E – Self-Certification of Financial Capability

F – Original Feasibility Cost Sharing Agreement

G – Feasibility Cost Sharing Agreement – Amendment No. 1

Prepared By:	Eric Martinez, MCE, Engineer, DWR, Flood Projects Office
Report Review:	Wilbur Huang, PE, DWR Flood Projects Office Section Chief Robert E. Scarborough, PE, DWR Flood Projects Office Section Chief Eric Koch, DWR Flood Projects Office Chief
Legal Review:	Robin Brewer, DWR Assistant Chief Counsel
Board Staff Review:	Ali Porbaha, Senior Engineer Eric Butler, Supervising Engineer Leslie Gallagher, Executive Officer





Proposed Features

-  Control Structure
-  Cut-Off Wall
-  Cut-Off Wall, Levee Reshaping
-  New Levee
-  Seepage Berm, Levee Reshaping
-  Seismic Fix
-  Seismic Fix, Levee Reshaping
-  Levee Raise
-  Erosion Protection

0 5 Miles



**SAN JOAQUIN RIVER BASIN
LOWER SAN JOAQUIN RIVER, CA
INTERIM FEASIBILITY STUDY**

ALTERNATIVE 7a
North and Central Stockton, Delta Front,
Lower Calaveras River, and San Joaquin River
Levee Improvements excluding RD 17

**U.S. ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT**

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

DRAFT RESOLUTION NO. 2016-03

FINDINGS AND DECISION AUTHORIZING APPROVAL
FOR LETTER OF SUPPORT AND SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR THE LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

WHEREAS, the U.S. Army Corps of Engineers was authorized in the Flood Control Act of 1962; House Resolution dated May 8, 1964 and Conference Report 108-357, which accompanied the Energy and Water Development Appropriations Act of 2004 to develop and formulate comprehensive plans for flood control and environmental restoration purposes in the Sacramento and San Joaquin River Basins; and

WHEREAS, the Central Valley Flood Protection Board is authorized to participate in the Lower San Joaquin River Feasibility Study by Water Code section 8615; and

WHEREAS, the Reclamation Board of the State of California, now known as the Central Valley Flood Protection Board, approved a letter of intent to become a Non-federal sponsor for the Lower San Joaquin River Feasibility Study on November 16, 2007; and

WHEREAS, the Central Valley Flood Protection Board, the Department of the Army, and the San Joaquin Area Flood Control Agency approved Amendment No. 1 to the Feasibility Cost Sharing Agreement on June 25, 2010 which added the State of California as a Non-federal sponsor to participate in the Lower San Joaquin River Feasibility Study;

WHEREAS, the Lower San Joaquin River Feasibility Study alternatives being considered are consistent with the 2012 Central Valley Flood Protection Plan (CVFPP), as the improvements will be a step toward 200-year level flood protection with opportunities for floodplain restoration, recreational enhancements, and ecosystem restoration. Additionally, these improvements will not impede future system-wide improvements contemplated by the CVFPP; and

WHEREAS, the CVFPP advances the vision for an integrated flood management system in the Central Valley to provide for safe, healthy, and thriving communities while protecting and restoring the environment; and

WHEREAS, A letter indicating support for the Lower San Joaquin River Feasibility Study recommended plan and the Non-Federal Sponsor's Self-Certification of Financial Capability for Agreements is a U.S. Army Corps of Engineers requirement as part of the submittal packet that goes to U.S. Army Corps of Engineers Headquarters in order to prepare for the Civil Works Review Board; and

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

- 1 Approves a Letter of Support, from the Central Valley Flood Protection Board (CVFPB) to the U.S. Army Corps of Engineers (USACE), indicating support for the recommended plan.
- 2 Approves a Self-Certification of Financial Capability, from the CVFPB to the USACE, indicating financial capability to satisfy the obligations for the study.

- 3 Delegates to the Executive Officer the authority to sign the Letter of Support and Self-Certification of Financial Capability in substantially the forms submitted.

PASSED AND ADOPTED by vote of the Board on _____, 2016.

William H. Edgar
President

Jane Dolan
Secretary

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
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February 18, 2016

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

Subject: **State Support for the Lower San Joaquin River Feasibility Study**

Dear Colonel Farrell:

The Central Valley Flood Protection Board's (Board) is writing this letter to show its support for the Lower San Joaquin River Feasibility Study (LSJRFS). The Board has been working with the Sacramento District project delivery team (PDT) on completing the Lower San Joaquin River Feasibility Study (LSJRFS) to be consistent with the 2012 Central Valley Flood Protection Plan and advance the vision for an integrated flood management system in the Central Valley to provide for safe, healthy, and thriving communities while protecting and restoring the environment.

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

We understand this letter of support is not binding by either party and does not financially commit future expenditures without a separate agreement. We look forward to completing this important feasibility phase and initiating dialogue regarding the development for subsequent phases.

If you have any questions, please contact me at (916) 659-5434 or Leslie.Gallagher@water.ca.gov or your staff may contact Michael Sabbaghian, Chief Flood Risk Reduction Projects Branch, at (916) 574-1404 or Michael.Sabbaghian@water.ca.gov.

Sincerely,

MS. Leslie M. Gallagher
Executive Officer
Central Valley Flood Protection Board

Colonel Michael J. Farrell

February 18, 2016

Page 2

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

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

Mr. Eric S. Koch, Chief
Flood Projects Office

Mr. Michael Sabbaghian, Chief
Flood Risk Reduction Projects Branch (FRR)

Mr. Robert E. Scarborough, Chief
FRR Projects Section C
FRR Projects Branch

Mr. Eric Martinez, Project Manager
FRR Projects Section C
FRR Projects Branch

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

I, _____, do hereby certify that I am the Executive Officer of the Central Valley Flood Protection Board (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Lower San Joaquin River Feasibility Study; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations for that study. I understand that the Government's acceptance of this self-certification shall not be construed as obligating either the Government or the Non-Federal Sponsor to implement a project.

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

BY: _____
Leslie M. Gallagher
Executive Officer, State of California
Central Valley Flood Protection Board

DATE: _____

FEASIBILITY COST SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY
FOR THE
LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

THIS AGREEMENT is entered into this 19 day of Feb, 2007, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and the San Joaquin Area Flood Control Agency represented by its Executive Director (hereinafter the "Non-Federal Sponsor").

WITNESSETH, THAT:

WHEREAS, the Corps of Engineers is authorized to conduct a feasibility study of the entire flood control system of the San Joaquin River and tributaries pursuant to House Report 105-190, which accompanied the Energy and Water Development Appropriations Act of 1998 (PL 105-62);

WHEREAS, prior to proceeding with such feasibility study, the U.S. Army Corps of Engineers conducted a reconnaissance study and determined that further planning in the nature of a feasibility study should proceed;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") to conduct such feasibility study (hereinafter the "Study" as defined in Article I.A. of this Agreement);

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the *Study*;

WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the "*non-Federal in-kind contributions*" as defined in Article I.K. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the *Study*;

WHEREAS, the Non-Federal Sponsor may provide up to 100 percent of its required contribution for the *Study* as *non-Federal in-kind contributions*;

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 *Study* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with

this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful *Study*.

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

ARTICLE I – DEFINITIONS

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management and ecosystem restoration along the Lower San Joaquin River at San Joaquin County, California, as generally described in the Lower San Joaquin River Section 905(b) Analysis, approved by the Commander, South Pacific Division on June 10, 2005 and December 5, 2008. The term includes the *non-Federal in-kind contributions* described in paragraph K. of this Article.

B. The term “*total study costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the costs of the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the Government’s costs of independent technical review and other review processes required by the Government; the Government’s costs of external peer review, if required; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; any costs incurred as part of feasibility studies under any other agreement; the Non-Federal Sponsor’s costs of negotiating this Agreement; or any costs of negotiating a design agreement for a project or separable element thereof.

C. The term “*study costs to be shared during the period of study*” shall mean the difference between *total study costs* and *excess study costs*.

D. The term “*excess study costs*” shall mean the difference between the most

recent estimate of *total study costs* and the amount of *total study costs* specified in Article IV.A.1. of this Agreement, excluding any increase in *total study costs* that resulted from a change in Federal law or a change in the scope of the *Study* requested by the Non-Federal Sponsor or any increase in *total study costs* that otherwise was agreed upon in writing by the parties.

E. The term “*period of study*” shall mean the time from the effective date of this Agreement to the date that:

1. the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with policies and programs of the Administration, if the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan; or
2. the decision document for the study is duly approved by the Government, if the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan; or
3. the date that this Agreement is terminated in accordance with Article IX of this Agreement.

F. The term “*financial obligations to be shared during the period of study*” shall mean the financial obligations of the Government and the costs for the *non-Federal in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *study costs to be shared during the period of study*.

G. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *study costs to be shared during the period of study* for the *non-Federal in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor’s total contribution of funds required by Article II.C.1.b. of this Agreement to *financial obligations to be shared during the period of study*, as projected by the Government.

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

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

J. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

K. The term “*non-Federal in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsor after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

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, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *non-Federal in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for the *Study* or commence the *Study* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Study*.

2. To the extent possible, the Government and the Non-Federal Sponsor shall conduct the *Study* in accordance with the *PMP*.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all *Study* products shall be exclusively within the control of the Government.

4. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal 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 or commencement of work on the *Study* using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for the *non-Federal in-kind contributions*, shall be exclusively within the control of the Government.

5. At the time the U.S. Army Engineer, Sacramento District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

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

7. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *non-Federal in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

8. Notwithstanding paragraph A.4. and paragraph A.6., if the award of any contract for work on the *Study*, or continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, would result in *excess study costs*, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for work on the *Study*, and continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Study* or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, but in no event shall the award of contracts or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces be deferred for more than six months. If the Government and the Non-Federal Sponsor agree to not proceed or fail to reach agreement on proceeding with further contract awards for the *Study*, or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, the parties shall terminate this Agreement and proceed in accordance with Article IX.D. of this Agreement.

B. The Government shall allocate *total study costs* between *study costs to be shared during the period of study* and *excess study costs*.

C. The Non-Federal Sponsor shall contribute 50 percent of *study costs to be shared during the period of study* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement will be less than the Non-Federal Sponsor's required share of 50 percent of *study costs to be shared during the period of study*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph G. of this Article, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *study costs to be shared during the period of study* if the Government determines at any time that the collective value of the following contributions has exceeded 50 percent of *study costs to be shared during the period of study*: (a) the value of the Non-Federal Sponsor's contributions under paragraph C.1.b. of this Article; (b) the amount of credit to be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

D. The Non-Federal Sponsor shall contribute 50 percent of *excess study costs* in accordance with the provisions of this paragraph.

1. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

2. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.C.3. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph D.1. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *non-Federal in-kind contributions*, subject to the conditions and limitations of this paragraph. 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 amount of costs to be included in *total study costs* for *non-Federal in-kind contributions*.

1. Acceptance by the Government of *non-Federal in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *non-Federal in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *non-Federal in-kind contributions* are necessary for the *Study*.

2. The Non-Federal Sponsor's costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

3. The Non-Federal Sponsor's costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *non-Federal in-kind contributions* are provided and the time the costs are included in *total study costs*.

4. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

5. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* in excess of the Government's estimate of the costs of the *non-Federal in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government.

F. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article for the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article. The credit for *non-Federal in-kind contributions* first shall be afforded toward the amount of funds determined in accordance with paragraph C.1.a. of this Article. If the amount of credit afforded exceeds the amount of funds determined in accordance with paragraph C.1.a. of this Article, the remaining portion of credit to be afforded shall be afforded toward the amount of funds determined in accordance with paragraph D.1. of this Article. However, the maximum amount of credit

that can be afforded for the *non-Federal in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article; the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article; or 50 percent of *total study costs*.

G. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article and included in *total study costs* that exceed the amount of credit afforded for the *non-Federal in-kind contributions* determined in accordance with paragraph F. of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *non-Federal in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

H. Upon conclusion of the *period of study*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

J. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government supports a project authorization, if authorization is required, and budgets for implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

ARTICLE III - STUDY COORDINATION TEAM

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

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

C. Until the end of the *period of study*, the Study Coordination Team shall

generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; external peer review, if required; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of and scheduling for the *non-Federal in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* except for the *non-Federal in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations. On matters related to the *non-Federal in-kind contributions*, that the Study Coordination Team generally oversees, the Study Coordination Team may make recommendations to the Non-Federal Sponsor including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Study Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for the *non-Federal in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$10,608,850; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$5,254,425; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$3,035,659; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$3,035,659; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$2,218,766; and the *non-Federal proportionate share* is projected to be 49.5 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By February 19, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; *study costs to be shared during the period of study*; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.C.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for work on the *Study* or commencement of work on the *Study* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces through the first quarter. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, SACRAMENTO (L2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the

Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

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

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make *financial obligations to be shared during the period of study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsor shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary when considered with any credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations to be shared during the period of study* as *financial obligations to be shared during the period of study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the

payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, *study costs to be shared during the period of study*, and *excess study costs*. In addition, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *study costs to be shared during the period of study* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, SACRAMENTO (L2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *study costs to be shared during the period of study* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.G. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

3. Should the final accounting show that the Non-Federal Sponsor's total required share of *excess study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto the Non-Federal Sponsor, within the applicable time frame described below, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, SACRAMENTO (L2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

a. If the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan and:

i. the project or project modification is authorized for construction -- then the payment shall be made no later than the date on which a Project Cooperation Agreement is entered into for the project or project modification; or

ii. the project or project modification is not authorized for construction within 5 years after the date of the final Report of the Chief of Engineers concerning the project or project modification -- then the payment shall be made no later than 5 years after the date of the final Report of the Chief of Engineers; or

iii. the *Study* is terminated and the project or project modification is not authorized for construction - then the payment shall be made no later than 2 years after such termination date.

b. If the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan, then the payment shall be made:

i. no later than the date on which a Project Cooperation Agreement is entered into for the project or project modification; or

ii. no later than 5 years after the date the decision document is duly approved by the Government; or

iii. no later than 2 years after the date of the termination of the *Study*, whichever is earliest.

ARTICLE V - DISPUTE RESOLUTION

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

ARTICLE VI - 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, or 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 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, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. 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, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by 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 *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 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 Amendments of 1996. 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 study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall 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 and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE VIII - 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 the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, 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 either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under 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 performance of the *Study* 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 *Study*.

C. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the Study and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the Study and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.C.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the Study shall be made

available to the parties to the Agreement.

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

ARTICLE X - NOTICES

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

If to the Non-Federal Sponsor:

San Joaquin Area Flood Control Agency
Executive Director
22 E. Weber Ave., Room 301
Stockton, CA 95202-2317

If to the Government:

USACE, Sacramento District
District Engineer
1325 J Street
Sacramento, CA 95814-2922

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

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

ARTICLE XI - 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.

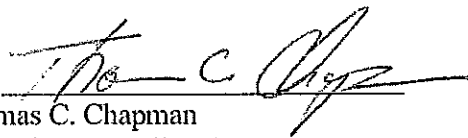
ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

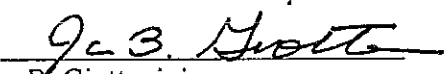
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

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

DEPARTMENT OF THE ARMY

SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

BY: 
Thomas C. Chapman
Colonel, Corps of Engineers
District Engineer
Sacramento District

BY: 
James B. Giottonini
Executive Director


DATE: 19 Feb 09

DATE: 2/19/09

CERTIFICATE OF AUTHORITY

I, GUY PETZOLD, do hereby certify that I am the principal legal officer of the San Joaquin Area Flood Control Agency, that the San Joaquin Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the San Joaquin Area Flood Control Agency in connection with the feasibility study for the Lower San Joaquin River Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the San Joaquin Area Flood Control Agency have acted within its statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
17TH day of FEBRUARY 2009.

BY: 
Guy Petzold
Deputy City of Stockton Attorney
Attorney for the San Joaquin Area
Flood Control Agency

CERTIFICATION REGARDING LOBBYING
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

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

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

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

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

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

BY: James B. Giottonini
James B. Giottonini
Executive Director

DATE: 2/19/09

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AMENDMENT NUMBER 1
TO THE
FEASIBILITY COST SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY
FOR THE
LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

THIS AMENDMENT is entered into this _____ day of _____, 2010, 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 (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency, (hereinafter "SJAFCA") represented by its Executive Director (hereinafter referred to collectively as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the Corps of Engineers is authorized to conduct a feasibility study of the entire flood control system of the San Joaquin River and tributaries pursuant to House Report 105-190, which accompanied the Energy and Water Development Appropriations Act of 1998 (PL 105-62);

WHEREAS, prior to proceeding with such feasibility study, the U.S. Army Corps of Engineers conducted a reconnaissance study and determined that further planning in the nature of a feasibility study (hereinafter the "Study") should proceed;

WHEREAS, the Government and SJAFCA entered into a Feasibility Cost Sharing Agreement on February 19, 2009 (hereinafter referred to as the "Agreement") for cost sharing of the Study;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into an amendment to the Agreement for the purpose of adding the State as a Non-Federal Sponsor;

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

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Amendment Number 1, desire to foster a partnering strategy and a working

relationship between the Government and the Non-Federal Sponsors through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsors, and facilitate the successful Study.

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

1. TITLE

The title of the Agreement is amended by inserting “THE STATE OF CALIFORNIA AND” between “THE DEPARTMENT OF THE ARMY AND” and “THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY”.

2. AGREEMENT

The Agreement is amended throughout by replacing the term “Non-Federal Sponsor” with the term “Non-Federal Sponsors” and replacing the term “Non-Federal Sponsor’s” with the term “Non-Federal Sponsors”. All necessary grammatical changes to reflect the plural “Non-Federal Sponsors” are also made.

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

Paragraph A.8. is amended by striking “Article IX.D.” and replacing it with “Article IX.E.”.

4. ARTICLE IX - TERMINATION OR SUSPENSION

Article IX is amended by inserting the following additional paragraph after paragraph C. and relettering the subsequent paragraphs:

“D. In the event that one or more of the Non-Federal Sponsors elects to terminate its responsibilities under this Agreement, and the remaining Non-Federal Sponsor(s) elects to continue to participate in the *Study*, the Government shall negotiate in good faith with the remaining Non-Federal Sponsor(s) to effect a timely and productive conclusion to that portion of the *Study* pertaining to the area of statutory authority applicable for the remaining Non-Federal Sponsor(s). The Government shall prepare a revised *PMP* and revised estimate of *total study costs* to complete that portion of the *Study* of interest to the remaining Non-Federal Sponsor(s). If the remaining Non-Federal Sponsor(s) elects to complete the *Study*, this Agreement shall be amended to reflect the negotiated revisions to the scope of the *Study* defined in Article I.A. of this Agreement and the estimate of *total study costs* in Article IV.A.1. of this Agreement. Amendments to this Agreement made pursuant to this paragraph shall reflect credits for

the contribution of funds and *non-Federal in-kind contributions* provided previously by all of the *Study* sponsors and shall reflect task reductions made as a result of withdrawal of any *Study* sponsor.”

5. ARTICLE X - NOTICES

Paragraph A. is amended by striking

“San Joaquin Area Flood Control Agency
Executive Director
22 E. Weber Ave., Room 301
Stockton, CA 95202-2317”

and replacing it with the following:

“Central Valley Flood Protection Board,
Executive Officer,
3310 El Camino Ave., Room LL40
Sacramento, CA 95821

San Joaquin Area Flood Control Agency,
Executive Director
22 E. Weber Ave., Room 301
Stockton, CA 95202-2317”

6. ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Agreement is amended by insertion of the following article:

“ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California, where creating such an obligation would be inconsistent with Article XVI, Section 1 of the Constitution of the State of California..

B. The Non-Federal Sponsors intend to fulfill their obligations under this Agreement. The Non-Federal Sponsors shall include in their budget requests or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsors reasonably believe that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsors shall use their best efforts to satisfy any requirements for payments or contributions of funds under this Agreement

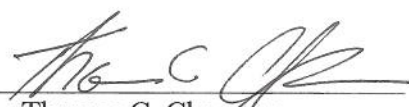
from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement."

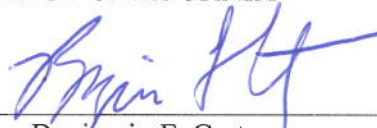
7. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

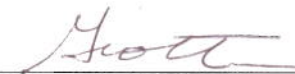
BY: 
Thomas C. Chapman
Colonel, Corps of Engineers
District Engineer

BY: 
Benjamin F. Carter
President
Central Valley Flood Protection
Board

DATE: 25 Jun '10

DATE: 6/25/10

SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

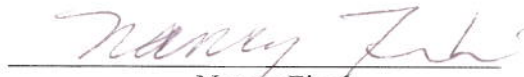
pc BY: 
James B Giottonini,
Executive Director

DATE: 6/22/10

CERTIFICATE OF AUTHORITY
CENTRAL VALLEY FLOOD PROTECTION BOARD

I, Nancy Finch, do hereby certify that I am the principal legal officer of the State of California, Central Valley Flood Protection Board, that the State of California, Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 1 to the Feasibility Cost Sharing Agreement between the Department of the Army and the State of California in connection with the feasibility study for the Lower San Joaquin River Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of Amendment Number 1 to the Agreement and that the persons who have executed the Amendment Number 1 to the Agreement on behalf of the State of California have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
25th day of June, 2010.



Nancy Finch
Counsel for Central Valley Flood Protection
Board

CERTIFICATION REGARDING LOBBYING
CENTRAL VALLEY FLOOD PROTECTION BOARD


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.

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

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



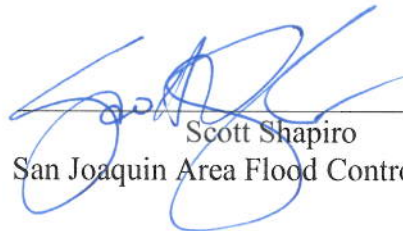
Benjamin F. Carter, President
Central Valley Flood Protection Board

DATE: 6/25/10

CERTIFICATE OF AUTHORITY
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

I, Scott Shapiro, do hereby certify that I am the principal legal officer of the San Joaquin Area Flood Control Agency, that the San Joaquin Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 1 to the Agreement between the Department of the Army and the San Joaquin Area Flood Control Agency in connection with the feasibility study for the Lower San Joaquin River Feasibility Investigation, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed the Amendment Number 1 to the Amendment Number 1 to the Agreement on behalf of the San Joaquin Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
22 day of June, 20 10.



Scott Shapiro
San Joaquin Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

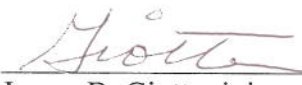
The undersigned certifies, to the best of his or her knowledge and belief that:

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Re 

James B. Giottonini
Executive Director

DATE: 6/22/10