

**Meeting of the Central Valley Flood Protection Board**

**April 26, 2019**

**Staff Report**

**San Joaquin River Basin, Lower San Joaquin River California Project  
Approval of Project Design Agreement and Local Design Agreement**

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**1.0 ITEM**

Consider adoption of Resolution 2019-10 (Attachment A) to:

1. Approve the Design Agreement (DA) (Attachment B) between the Central Valley Flood Protection Board (Board), U.S. Army Corps of Engineers (USACE), and San Joaquin Area Flood Control Agency (SJAFC) for the design of the San Joaquin River Basin, Lower San Joaquin River California Project (Project); and
2. Approve the Local Design Agreement (LDA) (Attachment C) between the Board and SJAFC for the design of the San Joaquin River Basin, Lower San Joaquin River California Project; and
3. Delegate the Board President authority to sign the DA and the LDA.

**2.0 SPONSORS**

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

**3.0 PROJECT LOCATION**

The Project is located in the North and Central City of Stockton area, San Joaquin County, California. The Project is bounded by the Mosher Slough to the north, State Highway 99 to the east, French Camp Slough to the south, the San Joaquin River on the southwest and the Stockton Deep Water Ship Channel to the west.

The initial design effort will be focused on two areas along the Delta Front or Mosher Slough. These areas are circled in Figure 1. The goal is to have these areas ready to construct should a federal New Start become available in 2021.

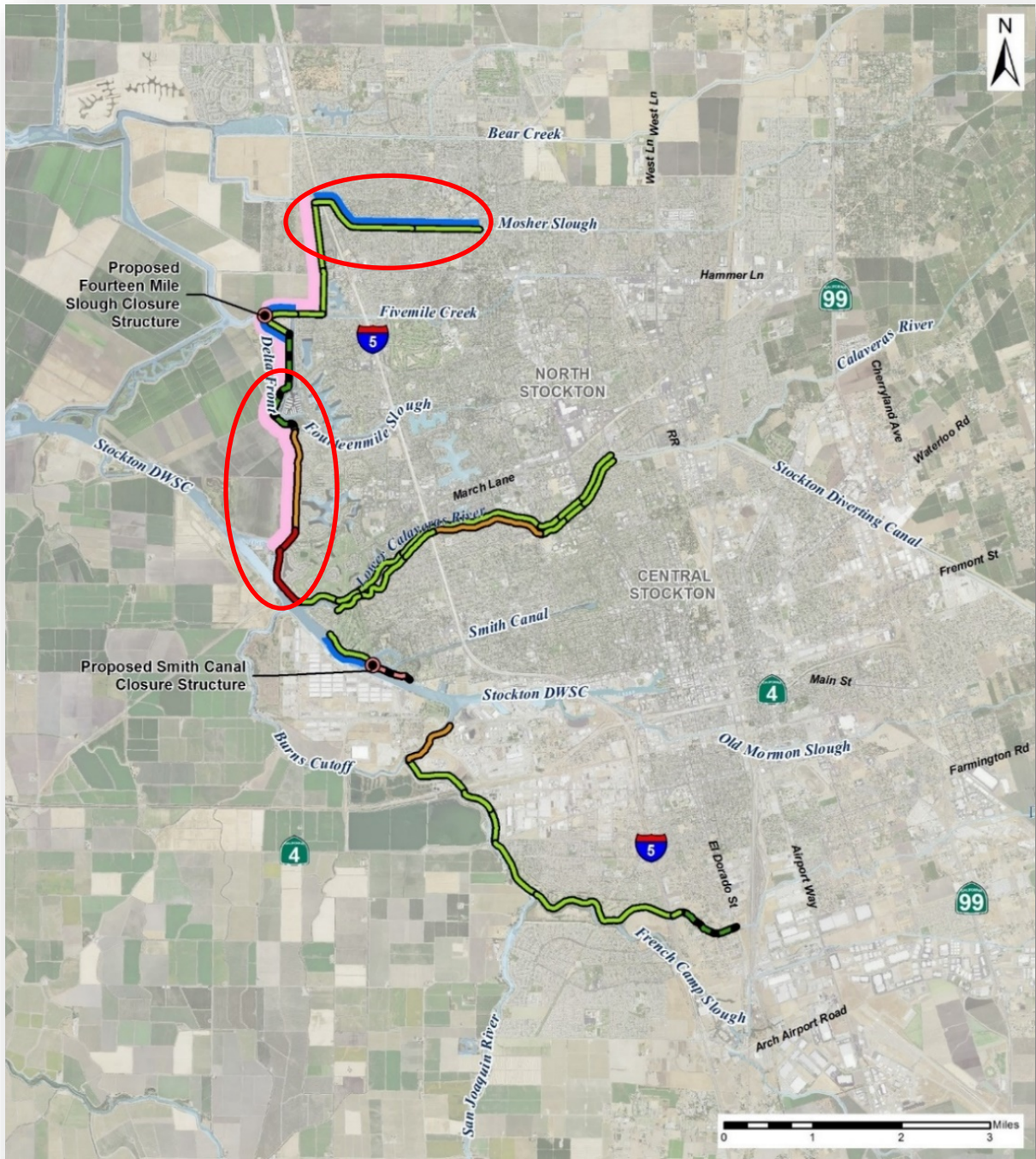


Figure 1: Project Location Map

#### **4.0 PROJECT DESCRIPTION**

The Lower San Joaquin River Flood Risk Management Feasibility Study Report (Report) identified the federal interest in providing flood protection improvements to the North and Central City of Stockton. The structural features of the Project include 40 miles of levee improvements and two closure structures, one at Fourteen-mile Slough and the other at Smith Canal. The levee improvements include a cutoff wall, deep soil mixing (seismic), a new levee, levee geometry improvements, and erosion protection, as generally described in the Chief's Report dated July 31, 2018. The proposed agreements will allow design to begin for the Project.

#### **5.0 PROJECT BACKGROUND**

The purpose of the Lower San Joaquin River Feasibility Study (LSJRFS) was to investigate the extent of Federal interest in a range of alternative plans to reduce flood risk in the cities of Stockton, Lathrop, Manteca and surrounding urbanizing areas (study area). The objective of the non-Federal Sponsors (NFS), who are the Central Valley Flood Protection Board (Board) and the San Joaquin Area Flood Control Agency (SJAFC), is to meet the requirements of California Senate Bill 5 (SB 5) of 2007, the Central Valley Flood Improvement Act, to achieve a 200-year level of protection for urban and urbanizing areas. The NFS is responsible for demonstrating compliance with State of California requirements for any proposed project resulting from this study. The study area experienced major floods in 1955, 1958, and 1997, resulting in varying degrees of damage.

The study area was rescoped to focus on high risk and high consequence separable areas and approximately 15,000 acres were screened out of the LSJRFS. The Reclamation District 17 was also deferred to a future study to determine alignment with EO 11988. The Final Integrated Interim Feasibility Report/Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was completed in January 2018.

The EIS/EIR focused on the North and Central Stockton area. There has been significant urban growth in the area. The DA and LDA agreements are for the design of levee improvements in North and Central Stockton with a goal of providing a 200-year level of protection for the basin, as mandated by California Senate Bill 5 (SB 5) of 2007. The current plan is to reduce flood risk to approximately 122,000 people, 80,000 structures, and \$28.7 billion in damageable assets. Due to the high population and economic impacts of a flood occurring in this area, it is critical that the improvements be implemented as soon as possible. The required level of protection will only be reached once all improvements detailed in the Study are complete.

The LSJRFS was initiated in 2009 with an agreement between SJAFCA and USACE. The State was added to the agreement as a cost sharing partner in June of 2010. The LSJRFS was rescoped in 2013. The EIS/EIR was completed in January of 2018 and the Record of Decision was approved on February 9, 2019. The Chief's report was approved on July 31, 2018 and federally authorized by the Water Resources Development Act of 2018. SJAFCA certified the Project's EIS/EIR on November 8, 2018.

Prior to this authorization, the State and SJAFCA partnered on projects in the basin under the State's Early Implementation Program. This program used Proposition 1E bond funds to complete projects ahead of the USACE's timeline for improvements, with the understanding that the cost of these improvements could be converted to credit for the non-federal cost-share on future USACE projects. The projects funded by this program were the Smith Canal Gate and the Reclamation District 17 Phase 4 Levee Improvements.

## **6.0 AUTHORITIES**

Federal:

- Flood Control Act of 1962, Section 203 (Public Law 87-874)
- Water Resources Reform and Development Act of 2014, Section 7002(2) (Public Law 113-121)
- Water Infrastructure Improvements for the Nation Act of 2016, Section 1322 (Public Law 114-322)
- America's Water Infrastructure Act of 2018, Section 1401 (Public Law 115-270),

State:

- California Water Code Sections 8615, 12645, 12657, and 12651

## **7.0 FUNDING STATUS**

The Project will follow a cost split of 65/35 federal/non-federal. The non-federal portion of the total project cost (35%) will be split 70/30 State/SJAFCA. The total design costs under the DA are projected to be \$6,346,000. The USACE cost share is projected to be \$4,125,000. The State cost share is projected to be \$1,554,700, and the SJAFCA cost share is projected to be \$666,300. These amounts are for the first 1-2 planned reaches only and are estimates subject to adjustment by the USACE, after consultation with the non-federal sponsors, and are not to be construed as the total financial responsibilities of the USACE and the non-federal sponsors. Design costs for remaining reaches will be included in a Project Partnership Agreement in the future upon preparation to construct

the first 1-2 planned reaches. If these projected amounts are to be increased, such increases shall be subject to the written consent of USACE, the Board and SJAFCA. The State cost share will be paid from existing Proposition 1E bond funds and future general fund appropriations.

## **8.0 DESIGN AND LOCAL DESIGN AGREEMENTS**

The proposed DA has been prepared for the Board's consideration. The DA establishes obligations of the Federal, State, and local sponsors. The DA includes a Certificate of Authority, Certification Regarding Lobbying, and the non-federal sponsor's Self-Certification of Financial Capability. The DA establishes a 65 percent cost share for the federal sponsor and a 35 percent cost share for the non-federal sponsors. The proposed LDA has also been prepared for the Board's consideration. The LDA establishes obligations of the non-federal (Board and SJAFCA) sponsors with respect to the non-federal share of the costs. The LDA establishes a 70 percent cost share for the State and a 30 percent cost share for SJAFCA.

## **9.0 ENVIRONMENTAL ANALYSIS**

The San Joaquin River Basin Lower San Joaquin River, CA Integrated Interim Feasibility Report / Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR) (State Clearinghouse Number 2010012027) was jointly prepared by the USACE as National Environmental Policy Act (NEPA) lead agency and SJAFCA as the California Environmental Quality Act (CEQA) lead agency. The Board is the responsible agency under CEQA.

The DA and LDA do not commit SJAFCA or the Board to a definite course of action, and there is no potential for the DA or the LDA to have a significant effect on the environment. The Board is therefore not required to make responsible agency CEQA findings prior to approving the DA or the LDA.

## **10.0 STAFF RECOMMENDATION**

Staff recommends that the Board adopt Resolution 2019-10 (in substantially the form provided in Attachment A), which:

### **Approves:**

- The Design Agreement in substantially the form provided
- The Local Design Agreement in substantially the form provided; and

**Delegates:**

- The Board President to sign the Agreements.

**11.0 LIST OF ATTACHMENTS**

- A. Resolution 2019-10
- B. Design Agreement, (including: Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability)
- C. Local Design Agreement (including: Exhibits A and B)

Prepared By:	Larry Ito
DWR Staff Review:	Robert Scarbrough, David Moldoff, David Martasian, Todd Bernardy, Jeremy Arrich
DWR Legal Review:	James Herink
Board Staff:	Ali Porbaha, Greg Harvey, Michael C. Wright
Board Legal Review:	Sarah Backus

**STATE OF CALIFORNIA  
NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
RESOLUTION 2019-10  
FOR EXECUTION OF A DESIGN AGREEMENT AND LOCAL DESIGN  
AGREEMENT FOR THE  
SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN RIVER, CALIFORNIA  
PROJECT**

- A. WHEREAS**, the Department of the Army, represented by the US Army Corps of Engineers (USACE) Sacramento District (hereinafter the “District Engineer”), is the federal sponsor for the San Joaquin River Basin, Lower San Joaquin River, California Project (Project). The Central Valley Flood Protection Board (Board), represented by the President, and San Joaquin Area Flood Control Agency (SJAFCA), represented by the Executive Director, are the non-federal sponsors for the Project (hereinafter the “non-federal sponsors”); and
- B. WHEREAS**, the Project is a cooperative effort by the USACE, the Board, and the SJAFCA to reduce flood risk for the metropolitan area of Stockton, California by design and construction of levee improvement measures to address seepage, stability, erosion and over topping concerns identified in the Lower San Joaquin River Flood Risk Management Feasibility Study Report, California; and
- C. WHEREAS**, the City of Stockton, California, is home to approximately 122,000 people and the metropolitan area has approximately \$28.7 billion in damageable assets; and
- D. WHEREAS**, the reports related to flood control investigations in the San Joaquin River Basin were initially authorized by Sections 2 and 6 of the Flood Control Act of 1936 (P.L. 74-738);
- E. WHEREAS**, House Report 105-90, which accompanied the Energy and Water Development Appropriations Act, 1998 (P.L. 105-62), identified initial funding and directed the USACE to conduct a comprehensive study under the 1964 study authority; and
- F. WHEREAS**, pursuant to Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b(a)), the Non-Federal Sponsors may perform or provide in-kind contributions for credit towards the non-Federal share of the total design costs; and
- G. WHEREAS**, Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. § 2213), specifies the cost-sharing requirements applicable to construction of the Project, and Section 105(c) of the Water Resources Development Act of 1986 (33 U.S.C. § 2215), provides that the costs of design shall be shared in the same percentages as construction of the Project; and

- H. WHEREAS**, California Proposition 1E (Pub. Resources Code, § 5096.800 et seq.) passed in 2006 to provide general obligation bond funding to address the high risk of flooding in California, and a local Proposition 218 election passed in 2007 to provide local funding in the metropolitan area of Stockton, California; and
- I. WHEREAS**, on February 19, 2009, SJAFCA signed a Federal Cost Share Agreement with the USACE to participate in the Lower San Joaquin River Feasibility Study; and
- J. WHEREAS**, on June 25, 2010, the Feasibility Cost Share Agreement was amended to include the State of California represented by the President of the Board; and
- K. WHEREAS**, Federal funds were provided in the Energy and Water Development and Related Agencies Appropriations Act of 2018 (P.L. 115-141) to initiate the preconstruction, engineering and design phase of the Project; and
- L. WHEREAS**, the America’s Water Infrastructure Act of 2018 (P.L. 115-270) authorized the National Economic Development Plan for USACE to initiate the preconstruction, engineering and design phase of the Lower San Joaquin River Basin, Lower San Joaquin, California Project (Project); and
- M. WHEREAS**, the final report of the USACE Chief of Engineers for the study of flood risk management along the San Joaquin River within the metropolitan area of Stockton, California, was executed and transmitted to the Assistant Secretary of the Army on July 31, 2018; the report included 40 miles of levee improvements proposed by the Study, and
- N. WHEREAS**, the Assistant Secretary of the Army executed a Record of Decision on February 8, 2019, finding that the plan recommended by the Chief of Engineers to be technically feasible, economically justified, in accordance with environmental statutes, and the public interest; and
- O. WHEREAS**, the Assistant Secretary of the Army executed a Record of Decision on February 8, 2019, finding the recommended plan is the National Economic Development Plan; and
- P. WHEREAS**, based on the Project’s primary project purpose of flood damage reduction, the parties agree that the Non-Federal Sponsors shall contribute 35 percent of the total design costs under this Agreement; and
- Q. WHEREAS**, the Board and SJAFCA are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and
- R. WHEREAS**, the Non-Federal Sponsors’ obligations are set forth in the Design Agreement (DA); and



- S. WHEREAS**, the Design Agreement describes the obligations of the federal and non-federal sponsors to complete design activities and the cost share of the design; and
- T. WHEREAS**, the proposed Local Design Agreement (LDA) establishes additional payment, accounting, administrative, and other obligations between the Board and SJAFCA necessary to coordinate and carry out the joint obligations of the non-federal partners as set forth in the DA; and
- U. WHEREAS**, the initial Project design cost is approximately \$6.346 million and will be cost shared at 65% federal and 35% non-federal; and
- V. WHEREAS**, the non-federal portion of design cost will be cost shared at 70% State and 30% SJAFCA; and
- W. WHEREAS**, the State cost share of the initial Project design cost is approximately \$1,554,800.

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD:**

1. Approves the DA between the Board, USACE, and SJAFCA for the design of the Project in substantially the form provided; and
2. Approves the LDA between the Board and SJAFCA for the design of the Project in substantially the form provided; and
3. Delegates to the Board President the authority to sign the DA, LDA, and Certification Regarding Lobbying.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2019.

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

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

DESIGN AGREEMENT  
 BETWEEN  
 THE DEPARTMENT OF THE ARMY  
 AND  
 THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD  
 AND  
 SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
 FOR  
 DESIGN  
 FOR THE  
 SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN RIVER, CALIFORNIA  
 PROJECT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”) and the State of California’s Central Valley Flood Protection Board, represented by the Board President and the San Joaquin Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California, represented by its’ Executive Director (hereinafter the “Non-Federal Sponsors”),

WITNESSETH, THAT:

WHEREAS, Federal funds were provided in the Energy and Water Development and Related Agencies Appropriations Act of 2018 (P.L. 115-141) to initiate the preconstruction, engineering and design phase of the Lower San Joaquin River Basin, Lower San Joaquin, California Project (Project);

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

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

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

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

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term “Project” means flood risk-reduction improvements to San Joaquin River Flood Control Projects along the San Joaquin River and appurtenant areas as generally described in the National Economic Development (NED) plan element of Alternative 7a, of the Lower San Joaquin River Feasibility Study Final Report – Final Environmental Impact Report/Supplemental Environmental Impact Statement, dated January 2018 and approved by the Chief of Engineers on July 31, 2018.

B. The term “Design” means perform detailed pre-construction engineering and design, including preparation of plans and specifications for the initial construction contract for the Project.

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

D. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsors that are identified as being integral to design of the Project by the Division Engineer for the South Pacific Division. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for design of the Project. In-kind contributions also include any investigations performed by the Non-Federal Sponsors to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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

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

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

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Design using funds appropriated by the Congress and funds provided by

the Non-Federal Sponsors. The Non-Federal Sponsors shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies. If the Government and non-Federal interest enter into a Project Partnership Agreement for construction of the Project, the Government shall include the total design costs in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

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

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

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

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

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

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

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

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

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

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

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

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

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Design, the Government and the Non-Federal Sponsors may establish a Design Coordination Team consisting of Government's Project Manager and the Non-Federal Sponsors' counterpart and one senior representative each from the Government and Non-Federal Sponsors to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsors' costs for participation on the Design Coordination Team shall be included in the total design costs. The Non-Federal Sponsors' costs for participation

on the Design Coordination Team shall be paid solely by the Non-Federal Sponsors without reimbursement or credit.

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

### ARTICLE III - METHOD OF PAYMENT

A. As of the effective date of this Agreement, total design costs are projected to be \$6,346,000, with the Government's share of such costs projected to be \$4,125,000, the Non-Federal Sponsors' share of such costs projected to be \$2,221,000; and the costs for betterments are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

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

C. The Non-Federal Sponsors shall provide to the Government required funds by delivering a check payable to "FAO, USAED, Sacramento District (L2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

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

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

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

#### ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Government may suspend or terminate Design unless the Assistant Secretary of the Army (Civil Works) determines that continuation of the Design is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

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

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

contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

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

## ARTICLE V – HOLD AND SAVE

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

## ARTICLE VI - DISPUTE RESOLUTION

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

## ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

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

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

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at



the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

## ARTICLE VIII - RELATIONSHIP OF PARTIES

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

## ARTICLE IX - NOTICES

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

If to the Non-Federal Sponsors:

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

and

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

If to the Government:

U.S. Army Corps of Engineers, Sacramento District  
Attn: Civil Works Project Management  
1325 J Street  
Sacramento, CA 95814-2922

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

## ARTICLE X - CONFIDENTIALITY

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

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

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

## ARTICLE XII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

## ARTICLE XIII – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.

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

DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD  
PROTECTION BOARD

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

David G. Ray, P.E.  
Colonel, U.S. Army  
District Engineer

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

William H. Edgar  
President,  
Central Valley Flood Protection Board

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

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

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

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

Chris Elias  
Executive Director,  
San Joaquin Area Flood Control Agency

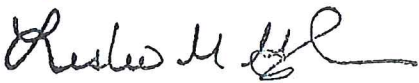
DATE: \_\_\_\_\_

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

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

IN WITNESS WHEREOF, I have made and executed this certification this 6  
day of September, 2018.

BY:

  
\_\_\_\_\_  
Leslie M. Gallagher  
Executive Officer, State of California  
Central Valley Flood Protection Board

DATE: 9/6/18

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

I, Chris Elias, do hereby certify that I am the Executive Director of the San Joaquin Area Flood Control Agency (SJAFA) (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the San Joaquin River Basin, Lower San Joaquin River California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Design Agreement Between the Department of the Army, the California Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency for Design for the San Joaquin River Basin, Lower San Joaquin River California Project.

IN WITNESS WHEREOF, I have made and executed this certification this 21<sup>st</sup> day of

September, 2018

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

TITLE: Executive Director

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

9/21/18

## CERTIFICATE OF AUTHORITY

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

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

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

## CERTIFICATE OF AUTHORITY

I, 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 the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency in connection with the San Joaquin River Basin, Lower San Joaquin River California Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the San Joaquin Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

5<sup>th</sup> day of October 2018.

  
\_\_\_\_\_  
Scott Shapiro  
Agency Counsel,  
San Joaquin Area Flood Control Agency



## CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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William H. Edgar  
President, State of California  
Central Valley Flood Protection Board

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



## CERTIFICATION REGARDING LOBBYING

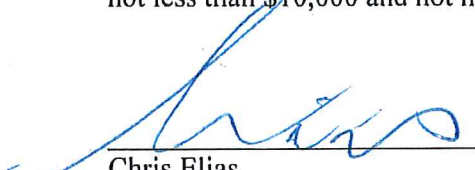
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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

  
Chris Elias  
Executive Director  
San Joaquin Area Flood Control Agency

DATE: 10/11/18

**LOCAL DESIGN AGREEMENT  
BETWEEN  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND  
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
FOR DESIGN OF THE  
SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN RIVER, CALIFORNIA PROJECT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between The State of California, acting through the Central Valley Flood Protection Board (hereinafter referred to as the "Board"), represented by the President, and the San Joaquin Area Flood Control Agency, (hereinafter referred to as "SJAFCA"), established pursuant to the laws of the State of California, represented by the Executive Director, and:

**RECITALS:**

**WHEREAS**, The Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the Government) received Federal Funds for Fiscal Years 2018 and 2019 for the Government to initiate design of the San Joaquin River Basin, Lower San Joaquin River, California Project (hereinafter Project); and

**WHEREAS**, SJAFCA and the Board, concurrent with this AGREEMENT are entering into a Design Agreement, titled "Design Agreement Between the Department of the Army, the State of California Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency for the Design of the San Joaquin River Basin, Lower San Joaquin River, California Project" for the provision of design for the Project, as defined in Article I.A. of that agreement;

**WHEREAS**, construction or implementation of the Project is authorized by Congress in Section 1401(2)(8) of the Water Infrastructure Improvements for the Nation Act of 2016, Public Law 114-322, and

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

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

**WHEREAS**, the Board and SJAFCA intend to serve as the nonfederal sponsors of the Project, and

**WHEREAS**, the non-federal sponsor's obligations are set forth in the Design Agreement, to be executed for this project between the Board, SJAFCA and the Government, and a draft of the Design Agreement is attached hereto as Exhibit A and incorporated by this reference; and

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

**NOW, THEREFORE, The Board and SJAFCA agree as follows:**

## **SECTION I. DEFINITIONS**

A. The term "*Project*", "*Design*", "*total design costs*", "*in-kind contributions*", "*betterment*", and "*fiscal year*" shall have the same meanings as defined in Article I of the Design Agreement.

B. The terms "non-federal Sponsor" and "non-federal interest" shall mean The Board and SJAFCA.

## **SECTION II. OBLIGATIONS OF THE BOARD AND SJAFCA**

A. The Board and SJAFCA each shall afford the other entity the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations provided the Government gives the Board or SJAFCA the opportunity to review and comment on such solicitations. Either entity shall also afford the other entity the opportunity to review and comment on all design products, and proposed contract modifications, including change orders, provided the Government gives either entity the opportunity to review and comment on such design products and proposed contract modifications. Either entity shall consider in good faith the comments of the other entity and forward them to the Government, but the contents of solicitations, award of contracts or commencement of design using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the Project shall be exclusively within the control of the Government.

B. The Board and SJAFCA shall provide, during the period of design a contribution equal to 35 percent of total design costs. If the Government projects at any time that the collective value of the Non-Federal Sponsors' contributions under Article II and Article III of the Design Agreement will be less than 35 percent of total design costs, the Board and SJAFCA shall provide a cash contribution, in accordance with Article III.C. of the Design Agreement, in the amount necessary to meet the non-federal participants' 35 percent share of total design costs. SJAFCA shall provide 30 percent of the non-federal share of total design costs, and the Board shall provide 70 percent of the non-federal share of total design costs unless otherwise directed by the State Legislature.

C. The Board and SJAFCA shall not use federal program funds to meet any of the Board's or SJAFCA's obligations for the Project under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the Project.

D. The Board or SJAFCA may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, the design of betterments into the Project. Such requests shall be in writing and shall describe the betterments to be performed or provided. Upon receipt of such writing, the Board or SJAFCA may request the Government to design betterments in accordance with Article II.J. of the Design Agreement. The cost for the design of betterments, unless otherwise specified by the Board or SJAFCA, shall be paid in accordance with the cost share identified above in Paragraph B. The Board and SJAFCA shall provide the full amount of funds required to pay for the design of betterments in accordance with Section IV of this agreement and Article III.C of the Design Agreement.

E. This Agreement shall not be construed as obligating any party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Board or SJAFCA of any future obligation under the terms of any agreement executed in connection with the Project in the future.

### **SECTION III. DESIGN COORDINATION TEAM**

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

### **SECTION IV. METHOD OF PAYMENT**

A. The Board and SJAFCA agree to pay their respective share of the total design costs in accordance with Article III of the Design Agreement. On the effective date of this Agreement, SJAFCA'S share of the total design costs are projected to be \$666,346, and the Board's required contribution of the total design costs are projected to be \$1,554,808. If these projected amounts are to be increased, such increases shall be subject to the written consent of the Board and SJAFCA.

B. As the design proceeds, The Board and SJAFCA, unless otherwise directed by the State Legislature, will attempt to maintain, subject to a final accounting, the 30 percent / 70 percent cost-sharing ratio of expenditures that is required by Section II.B of this Agreement, in the following manner:

(1) **Cash Payments to the Government:** The Board or SJAFCA will forward to the Government the cash payments for the non-federal proportionate share of total design costs as required by Article III of the Design Agreement. Such payments shall be made by the Board or SJAFCA as provided in Section IV of this Agreement.

(2) **Design Costs incurred by the Board or SJAFCA:** The Board or SJAFCA will provide to the other nonfederal sponsor a summary of actual costs it has incurred for design of the Project on a quarterly basis each July, October, January, and April, until the end of the period of design. The other nonfederal sponsor will submit itemized invoices bearing the appropriate contract number, no more frequently than monthly in arrears, for its expenditures for design, as determined to be eligible for credit in accordance with the provisions of Article II.C. of the Design Agreement to the addresses provided in Section XIII of this Agreement.

(3) **Request for Payment:** Either the Board or SJAFCA may make a written request for payment to maintain the 30 percent / 70 percent cost-sharing ratio for costs incurred as described in Paragraph B of this Section.

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

## **SECTION V. DISPUTES**

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

## **SECTION VI. INDEMNIFICATION**

SJAFCA shall hold and save the Government and the Board free from all damages arising from design of the Project and design of any additional work pursuant to Section II.D of this Agreement, and shall reimburse the Board attorneys' fees, including, but not limited to, those charged to it by the California Office of Attorney General, except for claims and damages due to the fault or negligence of the Government, the Board, or their contractors.

## **SECTION VII. MAINTENANCE OF RECORDS; AUDIT**

Within 60 days of the date of this Agreement, the Board and SJAFCA shall develop procedures for keeping books, records, documents and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Project costs. The Board and SJAFCA shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of Project construction, whichever is later, and resolution of all relevant claims arising therefrom, and shall make available at

their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement, and by Government in accordance with Article VII of the Design Agreement.

#### **SECTION VIII. FINAL ACCOUNTING**

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

#### **SECTION IX. COMPLIANCE WITH STATE AND FEDERAL LAW**

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

#### **SECTION X. TERM OF AGREEMENT; AMENDMENT**

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

#### **SECTION XI. OBLIGATION OF FUTURE APPROPRIATIONS**

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

#### **SECTION XII. CONFIDENTIALITY**

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

#### **SECTION XIII. NOTICES**

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

If to the Board:

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

If to SJAFCA:

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

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

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

#### **SECTION XIV. SEVERABILITY CLAUSE**

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

#### **SECTION XV. STANDARD CLAUSES**

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

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

THE CENTRAL VALLEY FLOOD  
PROTECTION BOARD OF THE  
STATE OF CALIFORNIA

Approved for legal form and sufficiency

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAN JOAQUIN AREA FLOOD CONTROL  
AGENCY, CALIFORNIA

Approved for legal form and sufficiency

By: \_\_\_\_\_  
Chris Elias  
Executive Director  
San Joaquin Area Flood Control  
Agency

\_\_\_\_\_  
Scott Shapiro  
Agency Counsel  
San Joaquin Area Flood Control Agency

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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

I, Leslie M. Gallagher, do hereby certify that I am the Executive Officer of the State of California Central Valley Flood Protection Board (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the San Joaquin River Basin, Lower San Joaquin River, California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the San Joaquin River Basin, Lower San Joaquin River, California Project Design Agreement.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

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

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

I, \_\_\_\_\_, do hereby certify that I am the Chief Financial Officer [OR TITLE OF EQUIVALENT OFFICIAL] of the San Joaquin Area Flood Control Agency (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the San Joaquin River Basin, Lower San Joaquin River, California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the San Joaquin River Basin, Lower San Joaquin River, California Project Design Agreement.

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

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

TITLE: \_\_\_\_\_

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

DESIGN AGREEMENT  
 BETWEEN  
 THE DEPARTMENT OF THE ARMY  
 AND  
 THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD  
 AND  
 SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
 FOR  
 DESIGN  
 FOR THE  
 SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN RIVER, CALIFORNIA  
 PROJECT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District (hereinafter the "District Engineer") and the State of California's Central Valley Flood Protection Board, represented by the Board President and the San Joaquin Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California, represented by its' Executive Director (hereinafter the "Non-Federal Sponsors"),

WITNESSETH, THAT:

WHEREAS, Federal funds were provided in the Energy and Water Development and Related Agencies Appropriations Act of 2018 (P.L. 115-141) to initiate the preconstruction, engineering and design phase of the Lower San Joaquin River Basin, Lower San Joaquin, California Project (Project);

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

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

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

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

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term “Project” means flood risk-reduction improvements to San Joaquin River Flood Control Projects along the San Joaquin River and appurtenant areas as generally described in the National Economic Development (NED) plan element of Alternative 7a, of the Lower San Joaquin River Feasibility Study Final Report – Final Environmental Impact Report/Supplemental Environmental Impact Statement, dated January 2018 and approved by the Chief of Engineers on July 31, 2018.

B. The term “Design” means perform detailed pre-construction engineering and design, including preparation of plans and specifications for the initial construction contract for the Project.

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

D. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsors that are identified as being integral to design of the Project by the Division Engineer for the South Pacific Division. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for design of the Project. In-kind contributions also include any investigations performed by the Non-Federal Sponsors to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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

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

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

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Design using funds appropriated by the Congress and funds provided by

the Non-Federal Sponsors. The Non-Federal Sponsors shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies. If the Government and non-Federal interest enter into a Project Partnership Agreement for construction of the Project, the Government shall include the total design costs in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

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

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

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

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

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

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

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

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

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

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

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

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

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Design, the Government and the Non-Federal Sponsors may establish a Design Coordination Team consisting of Government's Project Manager and the Non-Federal Sponsors' counterpart and one senior representative each from the Government and Non-Federal Sponsors to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsors' costs for participation on the Design Coordination Team shall be included in the total design costs. The Non-Federal Sponsors' costs for participation

on the Design Coordination Team shall be paid solely by the Non-Federal Sponsors without reimbursement or credit.

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

### ARTICLE III - METHOD OF PAYMENT

A. As of the effective date of this Agreement, total design costs are projected to be \$6,346,000, with the Government's share of such costs projected to be \$4,125,000, the Non-Federal Sponsors' share of such costs projected to be \$2,221,000; and the costs for betterments are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

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

C. The Non-Federal Sponsors shall provide to the Government required funds by delivering a check payable to "FAO, USAED, Sacramento District (L2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

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

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

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

#### ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Government may suspend or terminate Design unless the Assistant Secretary of the Army (Civil Works) determines that continuation of the Design is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

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

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



contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

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

## ARTICLE V – HOLD AND SAVE

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

## ARTICLE VI - DISPUTE RESOLUTION

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

## ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

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

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

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at

the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

## ARTICLE VIII - RELATIONSHIP OF PARTIES

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

## ARTICLE IX - NOTICES

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

If to the Non-Federal Sponsors:

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

and

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

If to the Government:

U.S. Army Corps of Engineers, Sacramento District  
Attn: Civil Works Project Management  
1325 J Street  
Sacramento, CA 95814-2922

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

## ARTICLE X - CONFIDENTIALITY

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

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

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

## ARTICLE XII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

## ARTICLE XIII – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.

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

DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD  
PROTECTION BOARD

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

David G. Ray, P.E.  
Colonel, U.S. Army  
District Engineer

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

William H. Edgar  
President,  
Central Valley Flood Protection Board

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

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

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

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

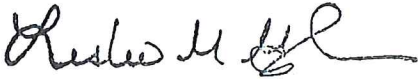
Chris Elias  
Executive Director,  
San Joaquin Area Flood Control Agency

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

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

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

IN WITNESS WHEREOF, I have made and executed this certification this 6  
day of September, 2018.

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

DATE: 9/6/18

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

I, Chris Elias, do hereby certify that I am the Executive Director of the San Joaquin Area Flood Control Agency (SJAFA) (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the San Joaquin River Basin, Lower San Joaquin River California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Design Agreement Between the Department of the Army, the California Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency for Design for the San Joaquin River Basin, Lower San Joaquin River California Project.

IN WITNESS WHEREOF, I have made and executed this certification this 21<sup>st</sup> day of

September, 2018

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

TITLE: Executive Director

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

9/21/18

## CERTIFICATE OF AUTHORITY

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

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

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

## CERTIFICATE OF AUTHORITY

I, 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 the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency in connection with the San Joaquin River Basin, Lower San Joaquin River California Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the San Joaquin Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

5<sup>th</sup> day of October 2018.

  
\_\_\_\_\_  
Scott Shapiro  
Agency Counsel,  
San Joaquin Area Flood Control Agency



## CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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William H. Edgar  
President, State of California  
Central Valley Flood Protection Board

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

## CERTIFICATION REGARDING LOBBYING

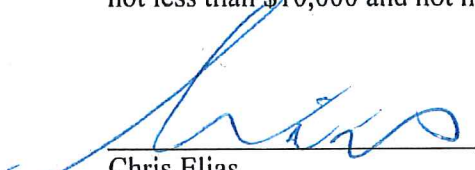
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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

  
Chris Elias  
Executive Director  
San Joaquin Area Flood Control Agency

DATE: 10/11/18

GTC 610

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

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

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section I 2200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code § 12205).

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

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

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

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

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

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

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

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

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

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

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

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

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

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

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

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

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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