

Board Packet for

Agenda Item 5.D.

Consider adoption of Resolution No. 2019-09 to approve the Design Agreement (DA) between the Board, U.S. Army Corps of Engineers, and West Sacramento Area Flood Control Agency (WSAFCA) and the Local Design Agreement (LDA) between the Board and WSAFCA, for the West Sacramento, California Project.

Design Agreement and Local Design Agreement

West Sacramento, California Project Flood Risk Management Project

Meeting of the Central Valley Flood Protection Board

March 29, 2019

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**Meeting of the Central Valley Flood Protection Board
March 29, 2019
Staff Report
West Sacramento, California Project
Approval of Project Design Agreement and Local Design Agreement**

1.0 ITEM

Consider adoption of Resolution 2019-09 (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 West Sacramento Area Flood Control Agency (WSAFCA) for the design of the West Sacramento, California Project (Project); and
2. Approve the Local Design Agreement (LDA) (Attachment C) between the Board and WSAFCA for the design of the West Sacramento, 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: West Sacramento Area Flood Control Agency

3.0 PROJECT LOCATION

The Project is located in West Sacramento, Yolo County, California. The West Sacramento Basin is bounded by the Sacramento River on the northeast and east, and the Sacramento Bypass on the northwest. The Yolo Bypass borders on the west and the Sacramento River Deep Water Ship Channel to the southwest, and the South Cross Levee to the south (See Figure 1).

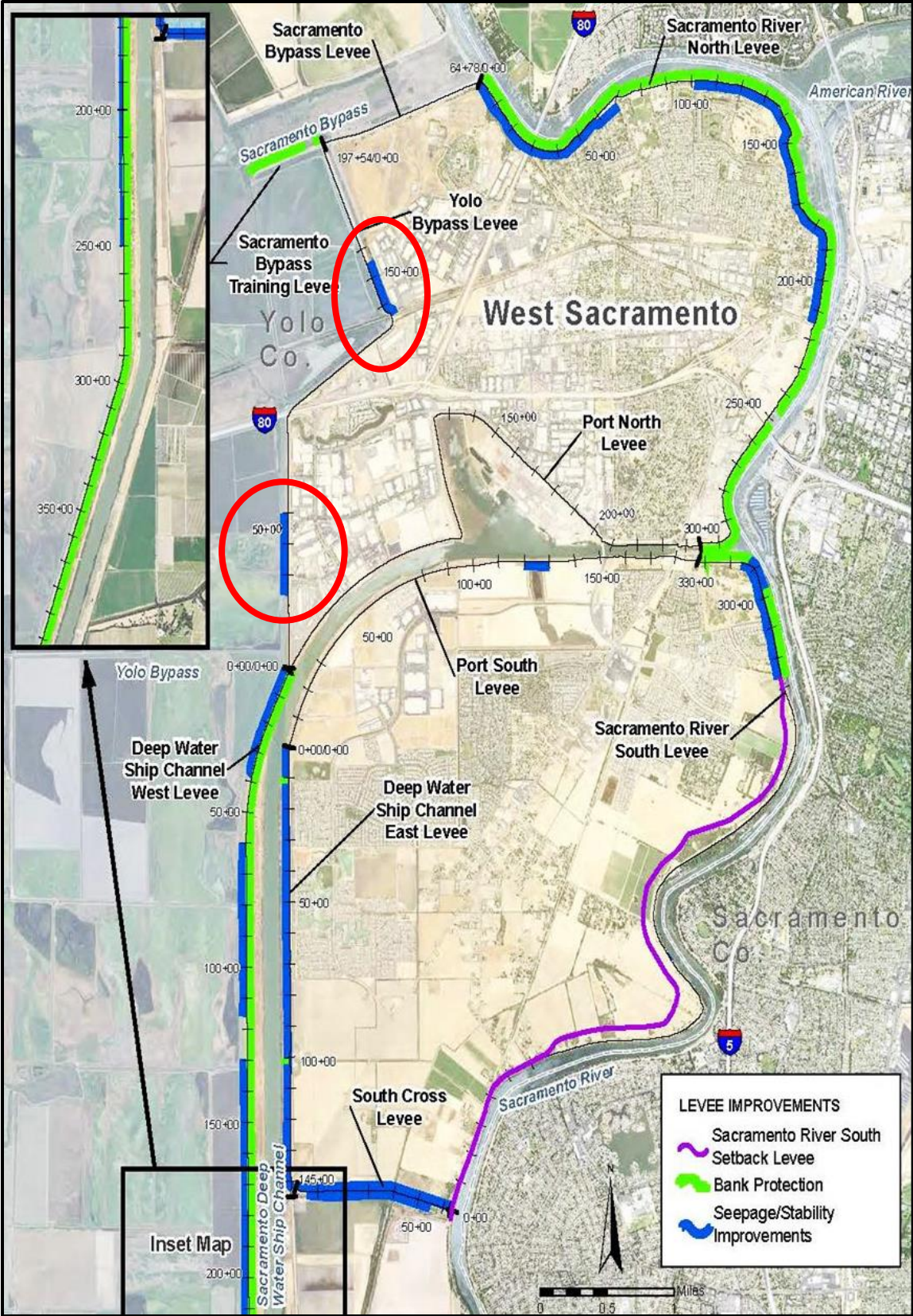


Figure 1: Project Location Map

4.0 PROJECT DESCRIPTION

The West Sacramento General Reevaluation Report (GRR) identified flood protection improvements needed to provide the City of West Sacramento with a 200-year level of flood protection. The waterways that surround the West Sacramento basin almost completely encircle the Project area (except for adjacent to the South Cross Levee), essentially leaving the basin as an island during high water events. The improvements included in the GRR include setback levees, cut off walls, and sheet-pile walls to fortify the levees against seepage and instability. The proposed agreements will allow design to begin on the two areas along the west side of the basin highlighted in Figure 1.

5.0 PROJECT BACKGROUND

The West Sacramento urban area has a dense residential population, growing commercial businesses, and critical infrastructure. There has been significant urban growth in the area over the last 3 decades, with a population of approximately 52,000 people, 18,000 structures, and \$6 billion in damageable assets. The goal of this agreement is to continue levee improvements in West Sacramento with a goal of providing a 200-year level of protection for the basin, as mandated by SB 5, 2007. There have been multiple levee improvement projects completed in the area since 2007, but there are still vulnerable locations in the basin that must be addressed. 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 GRR are complete.

The GRR was initiated in March of 2009 with an agreement between WSAFCA and USACE. The State was added to the agreement as a cost sharing partner in July of 2010. The GRR was completed in August of 2015 and federally authorized by the Water Resources Development Act of 2016.

Prior to this authorization, the State and WSAFCA partnered on multiple 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 part of the West Sacramento Levee Improvement Program (WSLIP) and included projects at the CHP Academy, The Rivers, I Street, and the Southport Setback Levee.

The initial design effort will be focused on two small areas along the Yolo Bypass along the west side of the basin. These areas are highlighted in Figure 1. The goal is to have these areas ready to construct should a federal New Start become available in 2020.

6.0 AUTHORITIES

Federal:

- Flood Control Act of 1962, Section 209 (Public Law 87-874)
- Water Resources Development Act (WRDA) of 1992 (Public Law 102-580)
- Energy and Water Development Appropriations Act of 1999 (Public Law 105-245)
- Energy and Water Development Appropriations Act of 2010, Section 118 (Public Law 111-85)
- Water Infrastructure Improvements for the Nation Act of 2016, Section 6001 (Public Law 114-322)

State:

- California Water Code Sections 8617.1, 12657, and 12670.2

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/WSAFCA. The total design costs are projected to be \$6,153,846.16. The USACE cost share is projected to be \$4,000,000.00. The State cost share is projected to be \$1,507,692.31, and the WSAFCA cost share is projected to be \$646,153.85. These amounts 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. If these projected amounts are to be increased, such increases shall be subject to the written consent of USACE, the Board and WSAFCA. 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 sponsors (Board and WSAFCA) with respect to the non-federal share of the costs.

9.0 ENVIRONMENTAL ANALYSIS

The West Sacramento General Reevaluation Report Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR) (State Clearinghouse Number 2009072055) was jointly prepared by the USACE as National Environmental Policy Act (NEPA) lead agency and WSAFCA as the California Environmental Quality Act (CEQA) lead agency. The Board is responsible agency under CEQA.

The DA and LDA do not commit WSAFCA 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 2019-09 (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 2019-09
- 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: Curtis Lee, PM, Morgan O'Brien, PM

DWR Staff Review: Michael Musto

DWR Legal Review: James Herink

Board Staff: Greg Harvey, Michael C. Wright

Board Legal Review: Jit Dua

**STATE OF CALIFORNIA
NATURAL RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
RESOLUTION 2019-09
FOR EXECUTION OF A DESIGN AGREEMENT AND LOCAL DESIGN
AGREEMENT FOR THE
WEST SACRAMENTO, CALIFORNIA PROJECT**

- A. WHEREAS**, the Department of the Army, represented by the US Army Corps of Engineers (USACE) represented by the Sacramento District (hereinafter the “District Engineer”) is the federal sponsor for the West Sacramento, California Project (Project). The Central Valley Flood Protection Board (Board), represented by the President, and West Sacramento Area Flood Control Agency (WSAFCA), 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 WSAFCA to reduce flood risk for the City of West Sacramento by design and construction of levee improvement measures to address seepage, stability, erosion and overtopping concerns identified in the West Sacramento General Reevaluation Report (GRR); and
- C. WHEREAS**, the West Sacramento basin is home to approximately 52,000 people and over \$6 billion in damageable assets; and
- D. WHEREAS**, the Sacramento Urban Area Levee Reconstruction Project, California dated May 1988, was executed after major flooding in 1986, the first phase of which focused on the Sacramento Urban area, including two locations in the City of West Sacramento. An additional study of the structural problems, discovered in the investigations for this project, indicated there was a need for significant repair and reconstruction, as the existing flood control system provided significantly less than the previous goal of 100-yr level of protection; and
- E. WHEREAS**, in 1993, construction for a stability berm and features related to through seepage were implemented under the Sacramento Urban Area Levee Reconstruction Project (West Sacramento Project); and
- F. WHEREAS**, WSAFCA was formed in 1994 as a joint powers agency by the City of West Sacramento; and Reclamation Districts 900 and 537; and
- G. WHEREAS**, in 1997 and 1998, after multiple major storms tested the West Sacramento levee system, minor damage was inflicted, however some under-seepage and structural issues were discovered.

- H. WHEREAS**, in 2002, the West Sacramento Project (initiated in 1993) was substantially completed.
- I. WHEREAS**, State Proposition 1E passed in 2006 to provide State 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 West Sacramento, California; and
- J. WHEREAS**, as the West Sacramento levee system was determined to still have deficiencies based on updated USACE and CA Code, the Project was selected for reevaluation, and
- K. WHEREAS**, USACE initiated the GRR in 2009 at the request of WSAFCA; and
- L. WHEREAS**, the Board became a joint non-federal sponsor with WSAFCA of the GRR in 2010; and
- M. WHEREAS**, the Chief’s Report for the GRR was executed and transmitted to the Assistant Secretary of the Army in April 2016. The report included 39 miles of levee improvements proposed by the GRR; and
- N. WHEREAS**, the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322) authorized the National Economic Development Plan for USACE to construct approximately 39 miles of improvements described in the GRR; and
- O. WHEREAS**, WSAFCA and the State have constructed levee improvements at the California Highway Patrol Academy, The Rivers, and I Street with over \$130 million in State cost share funding; and
- P. WHEREAS**, WSAFCA and the State are in active construction for levee improvements at the Southport Setback Levee with over \$50 million in State cost share funding; and
- Q. WHEREAS**, the Design Agreement (DA) describes the obligations of the federal and non-federal sponsors to complete design activities and the cost share of the design and
- R. WHEREAS**, the proposed Local Design Agreement (LDA) establishes additional payment, accounting, administrative, and other obligations between the Board and WSAFCA necessary to coordinate and carry out the joint obligations of the non-federal partners as set forth in the DA; and
- S. WHEREAS**, the initial Project design cost is approximately \$6.15 million and will be cost shared at 65% federal and 35% non-federal; and
- T. WHEREAS**, the non-federal portion of design cost will be cost shared at 70% State and 30% WSAFCA; and
- U. WHEREAS**, the State cost share of the initial Project design cost is approximately \$1,507,692.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD:

1. Approves the DA between the Board, USACE, and WSAFCA for the Project in substantially the form provided; and
2. Approves the LDA between the Board and WSAFCA 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,
THE STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD,
AND
WEST SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
DESIGN
FOR THE
WEST SACRAMENTO, CALIFORNIA PROJECT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”), the State of California Central Valley Flood Protection Board, represented by the Board President and the West Sacramento Area Flood Control Agency, represented by the Chair (hereinafter the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, Federal funds were provided in the Energy and Water Development and Related Agencies Appropriations Act, 2019, Pub. L. 115-244, div. A, 132 Stat. 2898 to initiate design of the West Sacramento, California Project;

WHEREAS, construction of the Project is authorized by Section 1401(2)(8) of the Water Infrastructure Improvements for the Nation Act of 2016, Public Law 114-322;

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;

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 the design of levee improvement measures to address seepage, stability, and erosion concerns identified for the West Sacramento levee system (including the Sacramento River Levee, the Yolo Bypass Levee, and the Sacramento River Deepwater Shipping Channel Levee) as generally described in the West Sacramento General Reevaluation (GRR) Final Report dated December 2015 and approved by the Chief of Engineers on April 26, 2016.

B. The term "Design" means performance of detailed pre-construction engineering and design, including preparation of plans and specifications for the initial construction contract and provide the review and coordination of the Non-Federal Sponsors' design efforts for early implementation 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 1st 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 1st 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 1st 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 incur 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' counterparts 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 \$6,153,846, with the Government's share of such costs projected to be \$4,000,000, the Non-Federal Sponsors' share of such costs projected to be \$2,153,846; 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 have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by 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 have 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
Executive Officer, Central Valley Flood Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, CA 95821

and

Flood Protection Manager
West Sacramento Area Flood Control Agency
1110 West Capitol Avenue
West Sacramento, CA 95691

If to the Government:
District Engineer
U.S. Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814

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 or the Board of Directors of the West Sacramento Area Flood Control Agency, where creating such an obligation would be inconsistent with Section 1 or Section 18 of Article XVI of the California Constitution. 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

WEST SACRAMENTO AREA FLOOD
CONTROL AGENCY

BY: _____

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

BY: _____

**Tom Ramos
Chair
West Sacramento Area Flood
Control Agency**

DATE: _____

DATE: _____

THE STATE OF CALIFORNIA CENTRAL
VALLEY FLOOD PROTECTION BOARD

BY: _____

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

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer for 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 West Sacramento Area Flood Control Agency in connection with the West Sacramento, 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. 1962d-5b), and that the person who executed this Agreement on behalf of the State of California Central Valley Flood Protection Board acted within his 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, _____, do hereby certify that I am the principal legal officer for the West Sacramento Area Flood Control Agency, that the West Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the West Sacramento Area Flood Control Agency in connection with the West Sacramento, 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. 1962d-5b), and that the person who executed this Agreement on behalf of the West Sacramento Area Flood Control Agency acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

James M. Day Jr.
Agency Counsel
West Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

William 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.

Tom Ramos
Chair
West Sacramento Area Flood Control Agency

DATE: _____

**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 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 West Sacramento, California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the West Sacramento, California Project Design Agreement.

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

BY: _____

TITLE: _____

DATE: _____

**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 West Sacramento Area Flood Control Agency (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the West Sacramento, California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the West Sacramento, California Project Design Agreement.

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

BY: _____

TITLE: _____

DATE: _____

LOCAL DESIGN AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD,
AND
WEST SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
DESIGN
FOR THE
WEST SACRAMENTO, 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 the Board), represented by the President, and the West Sacramento Area Flood Control Agency (hereinafter "WSAFCA"), 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 Year 2019 for the Government to initiate design of the West Sacramento, California Project (hereinafter Project); and

WHEREAS, WSAFCA 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 West Sacramento Area Flood Control Agency for Design for the West Sacramento, California Project" (Design Agreement) 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 Sacramento River and its tributaries; and

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

WHEREAS, CVFPB and WSAFCA intend to serve as the non-federal 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 CVFPB, WSAFCA 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 WSAFCA desire to specify their respective contributions and other obligations during the term of the Project.

NOW, THEREFORE, The Board and WSAFCA 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 WSAFCA.

SECTION II- OBLIGATIONS OF THE BOARD AND WSAFCA

- A. The Board and WSAFCA 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 WSAFCA 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 with the control of the Government.
- B. The Board and WSAFCA 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 WSAFCA 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*. Of the 35% non-federal *total design costs*, WSAFCA shall provide 30 percent, and the Board shall provide 70 percent, unless otherwise directed by the State Legislature.
- C. The Board and WSAFCA shall not use federal program funds to meet any of the Board's or WSAFCA'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 WSAFCA 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 WSAFCA 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 WSAFCA, shall be paid in accordance with the cost share identified above in Paragraph B. The Board and WSAFCA 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 WSAFCA 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 WSAFCA, 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 WSAFCA 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 WSAFCA 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, WSAFCA's share of the total design costs are projected to be \$646,154.00, and the Board's contribution of the total design costs are projected to be \$1,507,692.00. If these projected amounts are to be increased, such increases shall be subject to the written consent of the Board and WSAFCA.
- B. As the design proceeds, the Board and WSAFCA, 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 WSAFCA 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 WSAFCA as provided in Section IV. of this Agreement.

2. Design Cost incurred by the Board or WSAFCA: The Board or WSAFCA 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 addresses provided in Section XIII of this Agreement.
3. Request for Payment: Either the Board or WSAFCA 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 WSAFCA 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 -DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of the 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

WSAFCA 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, 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 calendar days of the effective date of this Agreement, the Board and WSAFCA shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. The Board and WSAFCA shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after the *period of design* or 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 the Government in accordance with Article VII of the Design Agreement.

SECTION VIII – FINAL ACCOUNTING

The Board and WSAFCA, upon completion or termination of design for 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 WSAFCA 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 WSAFCA 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 Regulation 600-7, entitled “Nondiscrimination 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 California Department of General Services. If the final Design Agreement executed between the Government, the Board, and WSAFCA differs from the draft Design Agreement that is attached as Exhibit A hereto, the Board and WSAFCA 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 WSAFCA or the Legislature of the State of California.

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 CVFPB:

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

If to WSAFCA:

General Manager
West Sacramento Area Flood Control Agency
1110 West Capitol Avenue, 2nd Floor
West Sacramento, CA 95691

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 the 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: _____

WEST SACRAMENTO AREA FLOOD
CONTROL AGENCY

Approved for legal form and sufficiency

By: _____
Tom Ramos
Chair
West Sacramento Area Flood Control
Agency

James M. Day Jr.
Agency Counsel
West Sacramento 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 West Sacramento, California Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the West Sacramento, 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 West Sacramento Area Flood Control Agency (the
“Non-Federal Sponsor”); that I am aware of the financial obligations of the Non-Federal Sponsor for
the West Sacramento, California Project; and that the Non-Federal Sponsor has the financial capability
to satisfy the Non-Federal Sponsor’s obligations under the West Sacramento, California Project Design
Agreement.

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

BY: _____

TITLE: _____

DATE: _____

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).)