

Board Packet for

Agenda Item 5.E.

Consider approval of Resolution No. 2019-08 to approve the Project Partnership Agreement between the Board, U.S. Army Corps of Engineers, and Sacramento Area Flood Control Agency (SAFCA) and approve the Local Partnership Agreement between the Board and the SAFCA for the American River Watershed – Folsom Dam Raise Project.

American River Watershed, California Folsom Dam Raise Flood Risk Management Project

Project Partnership Agreement

and

Local Project Partnership Agreement

Meeting of the Central Valley Flood Protection Board

March 29, 2019

Contents

Staff Report

Resolution 2019-08

Project Partnership Agreement

Local Project Partnership Agreement

**Meeting of the Central Valley Flood Protection Board
March 29, 2019**

Staff Report

**American River Watershed, California Folsom Dam Raise Flood Risk Management
Project for
Adoption of Project Partnership Agreement and Local Project Partnership
Agreement**

1.0 ITEM

Consider adoption of Resolution 2019-08 (Attachment A) to:

1. Approve the Project Partnership Agreement (PPA) (Attachment B) between the Central Valley Flood Protection Board (Board), U.S. Army Corps of Engineers (USACE), and Sacramento Area Flood Control Agency (SAFCA) for the construction of the American River Watershed, California Folsom Dam Raise Flood Risk Management Project (Project) in substantially the form provided; and
2. Approve the Local Project Partnership Agreement (LPPA) (Attachment C) between the Board and SAFCA for the construction of the Project in substantially the form provided; and
3. Delegate the Board President to sign the PPA and the LPPA.

2.0 SPONSORS

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

3.0 PROJECT LOCATION

Folsom Dam and Reservoir are located downstream from the confluence of the north and south forks of the American River, near the city of Folsom. Folsom Dam is located about 20 miles northeast of Sacramento and is a multipurpose concrete gravity dam operated by United States Bureau of Reclamation (USBR) as part of the Central Valley Project (CVP). The main section is flanked by two earthfill wing dams; the right-wing dam and the left-wing dam. In addition to the main section and wing dams, there is an auxiliary dam and eight smaller earthfill dikes.

4.0 PROJECT DESCRIPTION

The (Project) is a Flood Risk Management Project implemented jointly by the USACE, USBR, the Board, and SAFCA.

The Project includes the construction of a 3.5-foot raise on the main dam, the wing dams, the Mormon Island Auxiliary Dam (MIAD), and each of the 8 earthen dikes. Additionally, there will be structural enhancements to all of the main and emergency tainter gates and their associated piers, including top seals on all of the gates.

The purpose of the Project is to provide flood benefits while also resolving dam safety issues associated with passing the probable maximum flood (PMF).

5.0 PROJECT BACKGROUND

Folsom Dam was originally authorized in 1944 for flood control but was reauthorized in 1949 as a multi-purpose facility. Folsom Reservoir has a capacity of 977,000 acre-feet with a surface area of 11,450 acres. USACE constructed Folsom Dam and transferred it to the USBR for coordinated operation as an integral part of the CVP. Construction of the dam began in October 1948 and was completed in May 1956. Water was first stored in February 1955.

In the Energy and Water Development Appropriations Act (EWDAA) of 2004, Congress authorized a plan to raise Folsom Dam. The Project, along with the Folsom Dam Modifications Project, was reevaluated together in the Post Authorization Change Report (PACR) for the American River Water Resources Development Act (WRDA) of 1999 to include additional necessary features for the American River so that it could safely convey an emergency release of 160,000 cfs. Also authorized in WRDA 1999 was the Folsom Dam Modifications Project (modifications of the existing outlets of Folsom Dam), which would allow for higher releases from Folsom Dam earlier in flood events. At the same time, Congress also directed the USACE to review additional modifications to the flood storage of Folsom Dam, indicating that Congress was looking at maximizing the use of Folsom Dam for flood damage reduction prior to consideration of any additional storage on the American River. The Folsom Dam Modification construction was completed in 2017. The Project is being designed and scheduled to start construction in 2019.

6.0 AUTHORITIES

Federal:

- Defense Appropriation Act of 1993 (P.L. 102-396)
- American River Water Resources Development Act (P.L. 106-53)
- Section 128 and 134, Energy and Water Development Appropriations Act of 2004 (P.L. 108-137)
- Section 128, Energy and Water Development Appropriations Act of 2006 (P.L. 109-103)

State:

- Water Code sections 12670.11, 12670.10, 12670.12, and 12670.14

7.0 FUNDING STATUS

On February 9, 2018, the Bipartisan Budget Act of 2018, Public Law 115-123 was enacted (hereinafter “BBA 2018”) and provided \$216,523,185 to USACE to undertake construction of the Project as limited by the costs of the National Economic Development (NED) Plan. The fund allocated from BBA 2018 shall fully fund the project from the approval of the PPA going forward. The Non-Federal Sponsors (the Board and SAFCA, collectively) have stated that they will not be financing the required Non-Federal cash contribution as allowed under the provisions of BBA 2018. Additionally, regarding previously spent project cost, the Project PPA will follow a typical cost split of 65% Federal, 35% Non-Federal. The total design and construction costs are projected to be \$297,686,339 with the USACE’s share of such costs projected to be \$269,279,235, the Non-Federal Sponsors’ (State and SAFCA), share of such costs projected to be \$28,407,104. The State’s share projected cost after the split with SAFCA is \$19,884,973. 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 SAFCA.

8.0 PROJECT PARTNERSHIP AGREEMENT

The proposed PPA has been prepared by USACE in coordination with the Department of Water Resources (DWR) on behalf of the Board and SAFCA for the Board’s consideration. The PPA establishes obligations of the Federal (USACE) and Non-Federal Sponsors parties agreeing to construct the Folsom Dam Raise.

The PPA includes a Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor’s Self-Certification of Financial Capability. The PPA incorporates BBA 2018 funding and designates the prior spent cost on the project to a 65 percent

cost share for the Federal Sponsor and a 35 percent cost share for the Non-Federal Sponsors.

The LPPA will include a 70 percent State cost share and a 30 percent SAFCA cost share of the Non-Federal Sponsors' 35 percent cost share of the prior spent funds. The State cost-share will be paid from existing Proposition 1E bond funds and future general fund appropriations.

9.0 ENVIRONMENTAL ANALYSIS

The 2017 Folsom Dam Raise Project Final Supplemental Environmental Impact Statement / Environmental Impact Report (SEIS/EIR) (State Clearinghouse Number 2006022091), certified by the Board in April 2018, is the current supplemental supporting document to the 2007 Folsom Dam Safety and Flood Damage Reduction Project EIS/EIR and 2007 PACR. The 2017 SEIS/EIR was jointly prepared by the USACE as lead agency for National Environmental Policy Act (NEPA) compliance, and the Board as lead agency for California Environmental Quality Act (CEQA) compliance.

The Board is the lead agency under CEQA with regard to the PPA and the LPPA because of its discretionary funding authority. In certifying the 2017 SEIS/EIR, the Board fully complied with CEQA. The Board, through its actions on April 27, 2018, when it approved the project, included adopting all required CEQA Findings, Mitigation Monitoring and Reporting Plan (MMRP), and Statement of Overriding Considerations, has identified, disclosed and adopted the mitigation measures recommended in the SEIS/EIR. The Board has the authority to implement those mitigation measures or seek any required approvals for those mitigation measures identified in the CEQA Findings and MMRP. The analysis contained in the SEIS/EIR together with the Board's CEQA Findings are adequate for the Board's use as a decision-making body as a lead agency to approve the PPA and the LPPA, and for its consideration of discretionary actions necessary to implement the project within its jurisdiction. Since the SEIS/EIR was finalized, there have been no substantial changes in project circumstances that would require major revisions to the SEIS/EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the SEIS/EIR.

The Board's approval and execution of the PPA and LPPA are a discretionary action necessary to coordinate and carry out the joint obligations of the project partners to construct the Project and comes within the scope of the Board's prior CEQA Findings adopted when the Board certified the 2017 SEIS/EIR.

10.0 STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution 2019-08 (in substantially the form provided in Attachment A), which:

Approves:

- The PPA in substantially the form provided;
- The LPPA in substantially the form provided; and

Delegate:

- The Board President to sign the Agreements.

11.0 LIST OF ATTACHMENTS

- A. Resolution 2019-08
- B. PPA, (including: Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability)
- C. LPPA

Prepared By: Vance E. Cave, PM
DWR Staff Review: Wilbur Huang
DWR Legal Review: James Herink

Board Staff: Greg Harvey, Michael C. Wright
Board Legal Review: Jit Dua

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

**RESOLUTION 2019-08
FOR EXECUTION OF A PROJECT PARTNERSHIP AGREEMENT AND LOCAL
PROJECT PARTNERSHIP AGREEMENT FOR
THE AMERICAN RIVER WATERSHED, CALIFORNIA FOLSOM DAM RAISE
FLOOD RISK MANAGEMENT PROJECT**

BACKGROUND:

- A.** WHEREAS, the American River Watershed, California Folsom Dam Raise Flood Risk Management Project (Project) is a cooperative effort by the U.S. Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (Board), and Sacramento Area Flood Control Agency (SAFCA) to provide flood risk protection for the Sacramento area by making improvements to Folsom Dam and associated structures; and
- B.** WHEREAS, the Board is the State non-federal Project sponsor and Lead Agency under the California Environmental Quality Act (CEQA) for the Project, the USACE is the federal sponsor and Lead Agency under the National Environmental Policy Act (NEPA), and SAFCA is the local non-federal sponsor and responsible agency under CEQA; and
- C.** WHEREAS, the Continuing Appropriations Act for 1988 (P.L. 100-202) provides funding for the USACE to conduct reconnaissance studies of the American River Basin, allowing the American River Watershed Investigation to begin; and
- D.** WHEREAS, the Water Resources Development Act (WRDA) of 1999 (P.L. 106-53) authorized the Folsom Modification Project and directed the USACE to conduct further studies; and
- E.** WHEREAS, federal funds were provided in Section 128 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 to initiate design of the Project for flood damage reduction and ecosystem restoration; and
- F.** WHEREAS, construction of the Project is authorized by Sections 128 and 134 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 and Section 128 of the Energy and Water Development Appropriations Act of 2006, P.L. 109-103; and
- G.** WHEREAS, the American River Watershed, California, Long-Term Study (2002) and Environmental Impact Statement / Environmental Impact Report (EIS/EIR) recommended raising Folsom Dam by 7 feet; and
- H.** WHEREAS, the Post Authorization Change Report (March, 2007), refined the Selected Plan which primarily includes replacement of the three emergency spillway gates and a 3.5-foot Folsom Dam and Dikes raise; and
- I.** WHEREAS, the Board and SAFCA are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and

J.

- K.** WHEREAS, the Board certified the Folsom Dam Safety and Flood Damage Reduction Final Environmental Impact Statement/Environmental Impact Report (2007 Final EIS/EIR) and adopted the Findings of Fact, Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Plan for which a Notice of Determination was filed July 27, 2007 with the State Clearinghouse, and approved the Project; and
- L.** WHEREAS, the 2007 Final EIS/EIR contained a general evaluation of the Project, including: modification or replacement of emergency spillway gates and a 3.5-foot raise of all embankments; these features and their potential impacts were analyzed based on the level of design available at that time; and
- M.** WHEREAS, the 2007 Final EIS/EIR allowed for design refinements that may be required, and if necessary, provided provisions for preparation of supplemental environmental documents as required due to construction modifications or alterations; and
- N.** WHEREAS, gate modifications and dam raise elements were not evaluated at a project level in the 2007 Final EIS/EIR and have since been determined in a Design Refinement; and
- O.** WHEREAS, the Project Design Refinement includes, but is not limited to, refinements to the main dam's tainter gates and related structural alterations to the main dam, an earthen raise of Dikes 1-8 and the Mormon Island Auxiliary Dam, and construction of concrete floodwalls at the left-wing and right-wing dams. These work activities compose the Design Refinement evaluated in the 2017 Folsom Dam Raise Final Supplemental Environmental Impact Statement / Environmental Impact Report (2017 Final Supplemental EIS/EIR); and
- P.** WHEREAS, the Board, through Resolution 2018-01, certified the 2017 Folsom Dam Raise Final Supplemental EIS/EIR (SCH No. 2006022091, June 2017) and adopted the Findings of Fact, Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Plan for which a Notice of Determination was filed April 30, 2018 with the State Clearinghouse, and approved the Project; and
- Q.** WHEREAS, based on the Project's primary purpose of flood damage reduction, the Project would provide flood protection benefits while also resolving certain dam safety issues associated with passing the probable maximum flood (PMF); and
- R.** WHEREAS, the Federal Sponsors' and Non-federal Sponsors' obligations are set forth in the Project Partnership Agreement (PPA).
- S.** WHEREAS, the Non-Federal Sponsors' and Local Sponsors' obligations are set forth in the Local Project Partnership Agreement (LPPA).

NOW, THEREFORE, BE IT RESOLVED that the BOARD:

1. Finds the information and analysis contained in the 2007 Final EIS/EIR and the 2017 Final Supplemental EIS/EIR together with the Board's CEQA Findings are adequate for the Board's use as a decision-making body as a lead agency to approve the PPA and the

LPPA, and for its consideration of discretionary actions necessary to implement the Project within its jurisdiction.

2. Approves the PPA between the Board, USACE, and SAFCA for the design and construction of the Project in substantially the form provided; and
3. Approves the LPPA between the Board and SAFCA for the design and construction of the Project in substantially the form provided; and
4. Delegates to the Board President to sign the PPA and LPPA.

PASSED AND ADOPTED by vote of Board on _____, 2019.

By: _____
William H. Edgar
President

By: _____
Jane Dolan
Secretary

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CENTRAL VALLEY FLOOD PROTECTION BOARD
AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
THE AMERICAN RIVER WATERSHED, CALIFORNIA
FOLSOM DAM RAISE
FLOOD RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Engineer, the United States Army Corps of Engineers, Sacramento District, and the State of California acting by and through the Central Valley Flood Protection Board, represented by its Board President, and the Sacramento Area Flood Control Agency, represented by its Executive Director. The Central Valley Flood Protection Board and the Sacramento Area Flood Control Agency, are hereinafter referred to as the “Non-Federal Sponsors”.

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed project (hereinafter the “Authorized Project”) was authorized by Section 128 of the Energy and Water Development Appropriations Act of 2004, Public Law 108-137;

WHEREAS, the Government and Non-Federal Sponsors desire to enter into a Project Partnership Agreement to construct the Folsom Dam Raise flood risk management project a separable element of the Authorized Project (hereinafter the “Project”, as defined in Article I.A. of this Agreement);

WHEREAS, Folsom Dam is managed, operated, and maintained by the United States Bureau of Reclamation (hereinafter the “Bureau”) pursuant to Federal reclamation law, and the Bureau and the Non-Federal Sponsors entered into an agreement on _____, 2019 (hereinafter the “OMRR&R Agreement”) for Non-Federal Sponsors to pay the Bureau any additional costs associated with operation, maintenance, repair, rehabilitation, and replacement of the 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 the Project;

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsors' full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – DEFINITIONS

A. The term “Project” means the flood risk management separable element which consists of the major flood damage reduction component of the plan to raise the height of Folsom Dam by a combination of modifications, as generally described in the Report of the Chief of Engineers to Congress dated November 5, 2002, and approved by the Chief of Engineers on November 5, 2002.

B. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

C. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

D. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

E. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Sacramento District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

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

G. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

H. The term “additional work” means items of work related to, but not cost shared as a part of, the Project that the Government will undertake on the Non-Federal Sponsors’ behalf while the Government is carrying out the Project, with the Non-Federal Sponsors responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall complete design and undertake construction of the Project. As of the effective date of this Agreement, the amount of BBA 2018 funds available for the Project is estimated at \$216,523,185.

B. No later than 30 days after the effective date of this Agreement, the Non-Federal Sponsors shall provide to the Government any outstanding non-Federal share of design costs, currently estimated at \$21,800,219, for the costs of design incurred prior to execution of the Design Agreement, dated June 12, 2017, by delivering a check payable to “FAO, USAED, Sacramento (L2)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

C. In accordance with Article III, the Non-Federal Sponsors shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project.

D. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, 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 Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be

applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsors from voluntarily contributing costs associated with data recovery that exceed 1 percent.

F. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsors in writing. The Non-Federal Sponsors in accordance with the OMRR&R Agreement shall pay the Bureau any additional costs required by the Bureau to operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsors and the Bureau with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual and copies of all as-built drawings for the completed work.

G. Not less than once each year, the Non-Federal Sponsors shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsors shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsors shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsors shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. For real estate interests owned or controlled by the Non-Federal Sponsors, the Non-Federal Sponsors shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. The Non-Federal Sponsors shall not use Federal program funds to meet any of their 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.

M. 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: Section 601 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.

N. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsors may establish a Project Coordination Team to discuss significant issues or actions. The Non-Federal Sponsors shall be solely responsible for any costs it incurs for participation in the Project Coordination Team, without reimbursement by the Government.

O. The Non-Federal Sponsors may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsors. Each request shall be subject to review and written approval by the Division Commander for South Pacific Division (hereinafter the "Division Commander"). If the Government agrees to such request, the Government shall provide written notice to the Non-Federal Sponsors of the amount of funds required to cover such costs in advance of the Government performing such work.

1. As of the effective date of this Agreement, the costs for betterments are projected to be \$0 and the costs for additional work are projected to be \$0. Such costs are not included as part of the estimated total cost of the Project.

2. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments or additional work, 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 (L2)" to the District Commander, 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 such costs, the Non-Federal Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. If any real property interests other than those owned or controlled by the Bureau are required for construction, operation, and maintenance of the Project, the Government, after consultation with the Non-Federal Sponsors, shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such real property interests and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition. The Non-Federal Sponsors shall acquire such real property interests and shall provide the Government with

authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsors shall ensure that any real property interests they provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsors with a written notice to proceed with such improvements. The Non-Federal Sponsors shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. The Non-Federal Sponsors shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsors written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsors may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government, in its sole discretion, agrees to such a request, the Government, on behalf of the Non-Federal Sponsors, shall acquire such real property interests, construct such placement area improvements, and perform such relocations using BBA 2018 funds, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsors except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsors by quitclaim deed or deeds. The Non-Federal Sponsors shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsors does not alter the Non-Federal Sponsors' responsibility under Article IV for the costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsors assure that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsors

will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsors shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsors without reimbursement by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsors fail to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal Sponsors and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - REIMBURSEMENT

A. The Government, in accordance with the provisions of this Article and subject to the availability of BBA 2018 funds, shall reimburse the Non-Federal Sponsors for costs it incurs to acquire real property interests from private owners, to construct placement area improvements, to perform relocations, and to conduct investigations for hazardous substances determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the private owner, whichever occurs later, the Non-Federal Sponsors shall provide the Government with documents sufficient to determine the amount of reimbursement to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to determine the amount of reimbursement to be provided for other reimbursable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsors agree that the amount of costs eligible for reimbursement shall be determined and reimbursed in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article IX.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. Only costs associated with real property interests acquired from private owners after the effective date of this Agreement are eligible for reimbursement. The Non-Federal Sponsors shall obtain, for each real property interest acquired from a private owner, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsors provide the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsors are unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for reimbursement purposes.

(3) The Government shall reimburse the Non-Federal Sponsors the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsors exceed the approved appraised amount, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the appraised amount for reimbursement purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall notify the Government in writing of their intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsors shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsors shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsors may use the amount set forth in their appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for reimbursement purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the private owner is donating the real property interest to the Non-Federal Sponsors and releases the Non-Federal Sponsors in writing from their obligation to appraise the real property interest, and the Non-Federal Sponsors submit to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsors determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsors determine that an appraisal is unnecessary, the Non-Federal Sponsors shall prepare the written waiver valuation required by 49 C.F.R. Section

24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsors must offer the private owner the option of having the Non-Federal Sponsors appraise the real property interest.

d. Incidental Costs. The Government shall reimburse the Non-Federal Sponsors for incidental costs, documented to the satisfaction of the Government, that it incurs in acquiring from private owners any real property interests required pursuant to Article III for the Project. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, it incurs in constructing the placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for reimbursement. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, that it incurs in performing relocations directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for reimbursement.

a. For a relocation other than a highway, the costs eligible for reimbursement shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. Investigations for Hazardous Substances. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, it incurs in

conducting investigations for hazardous substances in accordance with Article IV.A. Only investigations for hazardous substances performed after the effective date of this Agreement are eligible for reimbursement.

5. Compliance with Federal Labor Laws. Any reimbursement afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project, any costs incurred by the Non-Federal Sponsors using Federal program funds, any costs incurred prior to the effective date of this Agreement, or real property interests (other than those acquired through relocations) that are owned or controlled by public entities.

ARTICLE VI - 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 construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available in BBA 2018 for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsors in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. 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 VII - HOLD AND SAVE

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

ARTICLE VIII - 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 IX - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to Project 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 Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations.

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 by the Government.

ARTICLE X - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors both act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. No 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 XI - 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsors:

Central Valley Flood Protection Board

President, Central Valley Flood Protection Board

3310 El Camino Avenue, Suite 170

Sacramento, CA 95821

Sacramento Area Flood Control Agency

Executive Director, Sacramento Area Flood Control Agency

1007 7th Street, 7th Floor

Sacramento, CA 95814

If to the Government:

District Commander

U.S. Army Corps of Engineers,

Sacramento District

1325 J Street

Sacramento, CA 95814-2922

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

ARTICLE 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.

ARTICLE XIII - 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 a party to this Agreement.

ARTICLE XV - 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 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 XVI - 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 either 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, the United States Army Corps of Engineers, Sacramento District.

DEPARTMENT OF THE ARMY

CENTRAL VALLEY FLOOD PROTECTION
BOARD

BY: _____

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

BY: _____

William H. Edgar
President, Central Valley
Flood Protection Board

DATE: _____

DATE: _____

SACRAMENTO AREA FLOOD CONTROL
AGENCY

BY: _____

Richard M. Johnson
Executive Director, Sacramento Area
Flood Control Agency

CERTIFICATE OF AUTHORITY

I, Kanwarjit Dua, do hereby certify that I am the principal legal officer for the State of California acting by and through the Central Valley Flood Protection Board, that the State of California acting by and through the Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Project partnership agreement between the Department of the Army and the state of California Department of Water Resources and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project between the Department of the Army and the State of California acting by and through the Central Valley Flood Protection Board in connection with the California Folsom Dam Raise Flood Risk Management Project and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Project partnership agreement between the Department of the Army and the state of California Department of Water Resources and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project, 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 Project partnership agreement between the Department of the Army and the state of California Department of Water Resources and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project on behalf of the State of California acting by and through the Central Valley Flood Protection Board acted within his or her statutory authority.

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

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

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer for the Sacramento Area Flood Control Agency, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the Department of the Army and the Central Valley Flood Protection Board and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project between the Department of the Army and the Sacramento Area Flood Control Agency in connection with the California Folsom Dam Raise Flood Risk Management Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Project Partnership Agreement between the Department of the Army and the Central Valley Flood Protection Board and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project, 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 Project Partnership Agreement between the Department of the Army and the state of California Department of Water Resources and the Sacramento Area Flood Control Agency for the American River Watershed, California Folsom Dam Raise Flood Risk Management Project on behalf of the Sacramento Area Flood Control Agency acted within his or her statutory authority.

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

M. Holly Gilchrist
Agency Counsel, 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,
Central Valley Flood Protection Board

DATE: _____

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

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 American River Watershed, California Project Folsom Dam Raise; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement Between the Department of the Army, the Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for construction of the American River Watershed, California Project Folsom Dam Raise Separable Element Thereof.

IN WITNESS WHEREOF, I have made and executed this certification this 27 day of February, 2019.

BY: Leslie M. Gallagher

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

CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

Richard M. Johnson
Executive Director, Sacramento Area Flood Control Agency

DATE: _____

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

I, Richard M. Johnson, do hereby certify that I am the Executive Director of the Sacramento Area Flood Control Agency (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the American River Watershed, California Project Folsom Dam Raise; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the PROJECT PARTNERSHIP AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE CENTRAL VALLEY FLOOD PROTECTION BOARD AND THE SACRAMENTO AREA FLOOD CONTROL AGENCY FOR CONSTRUCTION OF THE AMERICAN RIVER WATERSHED, CALIFORNIA PROJECT FOLSOM DAM RAISE SEPARABLE ELEMENT THEREOF.

IN WITNESS WHEREOF, I have made and executed this certification this 15th day of February, 2018.



BY: **Richard M. Johnson**

TITLE: **Executive Director, Sacramento Area Flood Control Agency**

**LOCAL PROJECT PARTNERSHIP
AGREEMENT
BETWEEN THE STATE OF CALIFORNIA,
CENTRAL VALLEY FLOOD
PROTECTION BOARD
AND
SACRAMENTO AREA FLOOD CONTROL
AGENCY FOR THE
FOLSOM DAM RAISE PROJECT**

This Agreement is entered into by and between The Central Valley Flood Protection Board of the State of California, hereinafter referred to as the "Board," and the Sacramento Area Flood Control Agency, hereinafter referred to as the "SAFCA," on the _____ day of _____ in view of the following circumstances:

WHEREAS, construction of the Folsom Dam Raise for flood risk management (hereinafter the "Project", as defined in Article I of this Agreement) at Folsom, California was authorized by Section 128 and 134 of the Energy and Water Development Appropriations Act of 2004, Public Law 108-137 that endorsed raising Folsom Dam in accordance with the findings of the 2002 American River Watershed Long-Term Study Final Supplemental Plan Formulation Report;

WHEREAS, Folsom Dam is a unit of the Central Valley Project and is owned, operated, and maintained by the United States Bureau of Reclamation (Bureau) pursuant to federal reclamation law;

WHEREAS, the Bureau will continue to own, operate, and maintain Folsom Dam both during the construction and after the completion of the Folsom Dam Raise;

WHEREAS, Water Code Sections 8617, 12657 and 12670.14 authorize the State of California, hereinafter referred to as the "State," acting through the Board, to cooperate on the Folsom Dam Raise, and authorize the Board to give satisfactory assurances to the United States Department of the Army, hereinafter referred to as "the Government," that the required local cooperation will be furnished by the State in connection with the Project;

WHEREAS, Water Code Section 12670.14 authorizes SAFCA to join the Board in providing the Government with assurances of nonfederal cooperation in connection with the Project;

WHEREAS, the Board and SAFCA intend to serve as the nonfederal sponsors of the Project on the condition that the SAFCA provides the Board with the assurances that are specified in this Agreement and required under Water Code Sections 12657 and 12670.14;

WHEREAS, the Board's and SAFCA's obligations as nonfederal sponsors of the Project are set forth in the Project Partnership Agreement (hereinafter the "PPA") to be executed for the Project between SAFCA and the Government. A draft of the PPA is attached as **Exhibit A** and incorporated by this reference.

WHEREAS, the Folsom Dam Raise Project is within the geographical jurisdiction of SAFCA;

WHEREAS, the Board and SAFCA have the power and authority to do all things required of the nonfederal participants for the Project;

WHEREAS, a mitigation site is not presently required for the Project, but one may be required in the future; and

WHEREAS, SAFCA and/or the Board may request the Government to accomplish betterments as defined in Article I.H and in accordance with Article II.N of the PPA.

NOW, THEREFORE, IT IS HEREBY AGREED:

SECTION I: Definitions

The terms defined in Article I of the PPA for the Project shall have the equivalent meaning in this Agreement.

SECTION II: Obligations of the Board and the SAFCA

- A. The Board and SAFCA will act as nonfederal sponsors of the Project and will provide the assurances of nonfederal cooperation required by the Government for the Project.
- B. Sites where Project work will be performed are shown on the Site Map, **Exhibit B**, which is attached hereto and incorporated by this reference. Sites may be modified or added during the course of performance of this Agreement without amendment of this Agreement.
- C. As authorized by Water Code Section 12585.5, the Board shall pay 70 percent of the following Project costs in accordance with the terms and conditions set forth in the PPA: the nonfederal capital costs required by Section 103(a) of Public Law (PL) 99-662; the nonfederal planning and engineering costs required by Section 105(b) of PL 99-662 and the nonfederal design costs required by Section 105(c) of PL 99-662.

- D. The Board and SAFCA shall furnish to the Government, according to the terms and conditions of Article III of the PPA, those lands, easements, rights of way, and relocations determined by the Government to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project.
- E. The Board may request SAFCA to request the Government to accomplish betterments in accordance with Article II.N of the PPA and Sections II.G.2, IV.I, and IV.J of this Agreement.
- F. The Board shall:
1. Pay 70 percent of the following Project costs: the nonfederal capital costs required by Section 103(a) of PL 99-662; the nonfederal planning and engineering costs required by Section 105(b) and the nonfederal design costs required by Section 105(c) of PL 99-662. If the total nonfederal contribution exceeds 50 percent of total Project costs and SAFCA receives a refund from the Government in accordance with Article VI.E. of the PPA, a fractional portion of this refund shall be returned by SAFCA to the Board.
 2. Pay the entire cost of betterments requested by the Board. Plans and specifications for betterments may be prepared by the Board and approved by SAFCA. Upon such approval, SAFCA may request the Government to accomplish betterments in accordance with Article II.N. of the PPA. The Board shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform relocations associated with such betterments in accordance with Section II of this Agreement. The Board will establish a cost accounting system that will separately identify and document all costs attributable to betterments and will provide SAFCA with the full amount of funds required to pay for betterments in accordance with Section IV of this Agreement and Article VI.C of the PPA.
- G. SAFCA shall:
1. Pay 30 percent of the following Project costs: the nonfederal capital costs required by Section 103(a) of PL 99-662; the nonfederal planning and engineering costs required by Section 105(b) of PL 99-662 and the nonfederal design costs required by Section 105(c) of PL 99-662. If the total nonfederal contribution exceeds 50 percent of total Project costs and the Board receives a refund from the Government in accordance with Article VI.E. of the PPA, a fractional portion of this refund shall be returned by the Board to SAFCA;

2. Operate, maintain, repair, replace, and rehabilitate the facilities and related features constructed pursuant to the Project in accordance with the AGREEMENT BETWEEN THE UNITED STATES AND THE SACRAMENTO AREA FLOOD CONTROL AGENCY PROVIDING FOR OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION OF FOLSOM DAM MODIFICATIONS AND ASSOCIATED FUNDING, dated 23 December, 2003 and any subsequent amendments thereto, and in accordance with the regulations or directions prescribed by the Secretary of the Army;
 3. Hold and save the Government free from all claims and damages arising from the construction, operation, maintenance, repair, replacement, or rehabilitation of the Project, (1) except for claims and damages due to the fault or negligence of the Government or its contractors or (2) during the periods the Bureau operates, maintains, repairs, replaces and rehabilitates the Project;
 4. Hold, defend, indemnify and save the State and the Board, their officers, agents, and employees, and successors or assigns, to the extent required by State law, free and harmless from any and all claims or damages due to the construction, operation, or maintenance of the Project, including any responsibility for claims or damages arising out of work performed by the Government for which the State or the Board may be held liable under the terms of the PPA. SAFCA agrees that it will levy and collect assessments or user charges as may be necessary and permissible under State law to satisfy its obligations to the State and the Board as required by this agreement; and
 5. Pay the entire cost of betterments requested by SAFCA. Plans and specifications for betterments may be prepared by SAFCA and approved by the Board. Upon such approval, the Board may request the Government to accomplish betterments in accordance with Article II.N. of the PPA. SAFCA shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform relocations associated with such betterments in accordance with Section III of this Agreement. SAFCA will establish a cost accounting system that will separately identify and document all costs attributable to betterments and will provide the Board with the full amount of funds required to pay for betterments in accordance with Section IV of this Agreement and Article VI.F. of the PPA.
- H. To the extent to of its powers, SAFCA agrees to participate in and comply with applicable federal floodplain management and flood insurance programs.

- I. In order to facilitate nonfederal participation in the Project, SAFCA and the Board agree that the following actions and/or decisions shall be made only upon mutual consent of both the Board and SAFCA:
 - 1. The issuance of a letter to the Government indicating that the nonfederal sponsor is willing to proceed with the Project;
 - 2. The decision as to the maximum cumulative financial obligation for construction of the Project;
 - 3. The decision to request betterments (PPA Article II.N.), provided that the party requesting the betterments will be solely responsible for any additional cost associated with such betterments; and
 - 4. The appointment of representatives to the Project Coordination Team (PPA Article II.M).
- J. Subject to the Board's authority in Water Code Section 8710, SAFCA shall prescribe and enforce, to the extent of its powers, regulations preventing obstruction of or encroachment on Project works that would reduce the level of protection afforded or hinder operation, maintenance, repair, replacement, and rehabilitation.

SECTION III: Acquisition of Project Rights of Way

- A. SAFCA or its contractors may acquire the lands, easements, rights of way (including those required for relocations, borrow material, and/or excavated material disposal) and perform relocations that are necessary for the Project, as determined by the Government, within its area of jurisdiction within the Project's geographic limits ("Project rights of way"). If SAFCA or its contractor provides Project rights of way, it will furnish the personnel, services, and materials necessary to accomplish the following tasks:
 - 1. Final surveying and preparation of legal descriptions of the parcels that are to be acquired for Project rights of way, hereinafter referred to as "all parcels."
 - 2. Preparation of deeds and contracts for all parcels.
 - 3. Appraisal of all parcels.

4. Examination of title to all parcels, including the obtaining of litigation guarantees and/or preliminary reports on title and policies of title insurance.
 5. Acquisition of all parcels by deed and contract and/or condemnation by a date, which shall be specified by the Board. For parcels being acquired by condemnation, an Order of Possession shall be deemed "acquisition" for purposes of meeting the above date.
 6. Relocation of public utilities, private utilities, and other facilities, as required by the Project, which will not be included in the Government's Project construction contract.
 7. Providing relocation assistance for qualified occupants of acquired property, as required by State and federal statutes, rules, and regulations.
- B. The Board staff shall provide SAFCA with appraisal guidelines, appraisal format, and sample copies of right-of-way contracts and deed language to be used for acquisition activities.
- C. Record Title to all parcels not vested in the Federal Government will be vested in the Sacramento San Joaquin Drainage District or the appropriate local maintaining agency. The Board shall ensure that SAFCA is able to maintain the Project by, as needed, either granting an easement for operation and maintenance to local maintaining agencies or entering into a joint-use agreement with the local maintaining agencies. Any such agreement shall be executed no later than six months after all real estate for the Project has been acquired.
- D. If either the Board or SAFCA uses a contractor to acquire Project rights of way, the acquiring agency shall enter into a written agreement with the contractor for that purpose. The agreement shall be subject to the prior review and approval of SAFCA and the Department of General Services Office of Real Estate and Design Services. No Project rights of way acquired by a contractor shall be eligible for credit or payment to the acquiring agency unless the contract between acquiring agency and the contractor has been so approved. The contract shall provide for termination of the contractor by acquiring agency upon 30 days' written notice.
- E. Neither SAFCA nor its contractor shall take steps toward acquiring Project rights of way until notified in writing by the Board to do so.

- F. If SAFCA or its contractors provide Project rights of way, SAFCA acknowledges that pursuant to Article III of the PPA, SAFCA is obligated to certify to the Government that Project rights of way have been acquired. The date by which SAFCA's certification will be required will be set by the Government after the PPA and this Agreement have been executed. S A F C A agrees to use its best efforts to provide, by no later than 30 days before the date on which certification to the Government is required, a certification to the Government specifying that: (a) SAFCA holds sufficient legal rights to allow Project construction to proceed in the form of fully executed deeds or Superior Court orders for immediate possession; and (b) that the Board, the Government, and their contractor's agents are permitted to utilize those legal rights for the purpose of constructing the Project.
- G. The actual reasonable costs of Project rights of way incurred by the acquiring agency and its contractors, and their reasonable costs of performance, as defined in this paragraph, shall be eligible for credit toward the acquiring agency's portion of the nonfederal share of total Project costs. For purposes of this Agreement, the term "costs of performance" shall include: fees and expenses payable to the acquiring agency's contractors pursuant to their contracts; reasonable court costs and attorney's fees incurred in pursuing the acquisition of Project rights of way; title insurance company escrow fees and premiums for title insurance preliminary reports, policies, and litigation guarantees; and engineering fees and other incidental expenses and costs properly attributable to the acquisition of Project rights of way.
- H. The acquiring agency shall (1) keep the other agency 's staff apprised of its right-of-way acquisition activities and the activities of its contractors, (2) consult with the other agency's staff on matters concerning compliance with State and federal acquisition rules and regulations, and (3) provide complete access as requested to its records relating to such right-of-way acquisition. The acquiring agency shall provide to the other agency staff a copy of all litigation guarantees, preliminary title reports and policies of title insurance reasonably promptly following receipt thereof.
- I. If SAFCA is using a contractor to acquire Project rights of way, the contractor's performance shall be subject to review by the Board. If in the opinion of the Board the contractor's performance is not sufficient to allow SAFCA to comply with the terms of this Agreement, then after the Board has consulted with SAFCA regarding its opinion, the Board may request the SAFCA to terminate the contractor pursuant to the terms of SAFCA's contract with the contractor.
- J. Before SAFCA or its contractor makes a written offer to an owner, the acquiring agency shall provide to the Board staff for review and approval the appraisal, proposed right-of-way contract, and deed for each parcel. The Board's review shall be accomplished, and the results reported to the acquiring agency

reasonably promptly following receipt of those documents, and in no event later than 30 days following receipt. Before the close of escrow for any parcel, the acquiring agency shall provide to the Board staff the memorandum of settlement and either a litigation guarantee or a preliminary title report.

- K. SAFCA may elect to purchase lands, easements, and rights of way prior to precise definition of those required for the Project. In accordance with Article III of the PPA, the Board will provide the SAFCA with credits toward the share of total Project costs for the fair market value of Project rights of way. SAFCA will be credited only for the SAFCA's share of Project rights of way determined to be eligible for credit under the terms of the PPA. For these reasons, payment to SAFCA for any lands, easements, or rights of way purchased, and relocations made prior to execution of the PPA, and/or prior to final determination by the Government of the extent of land interests necessary for the Project, is subject to adjustment during the final accounting of nonfederal costs shared between the Board and SAFCA. No credit shall be given for lands, easements, and rights of way that, as determined by the Government, were previously obtained for purposes of a prior project built in cooperation with the Government. For lands, easements, and rights of way that were acquired not more than five years prior to the date on which the PPA will be signed, the credit provided hereunder shall include the incidental costs of acquiring the lands, easements, and rights of way.
- L. Pursuant to Government Code Section 895.4, SAFCA shall defend, indemnify, and hold the Board harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the SAFCA, its officers, agents, and employees under or in connection with any work, authority, or jurisdiction delegated to the SAFCA under this Section.

SECTION IV: Method of Payment

- A. The following table is appended hereto as **Exhibit D** and made a part of this Agreement by this reference: Estimated Costs for American River Watershed (Folsom Dam Raise) at Folsom Dam, California.
- B. SAFCA will establish a cost accounting system that will separately identify and document all nonfederal costs attributed to the Project.
- C. The amounts contained in **Exhibit D** are estimates and may change as the design of the Project, the acquisition of rights of way, and construction proceed. The parties agree to make payments during the course of this Project, not to exceed the amounts shown on those tables, unless this Agreement is amended in accordance with Section X. of this Agreement. After all contracts awarded by the Government have

been completed or terminated and claims settled, a final allocation of the total Project costs will be performed based on the actual costs of the Project.

D. The Parties agree to pay their respective share of Project costs in accordance with **Exhibit E**, Budget Detail and Payment Provision, attached hereto and incorporated by this reference. No federal funds may be used to meet the nonfederal share of costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the federal granting agency.

E. As the Project proceeds, SAFCA will attempt to maintain, subject to a final accounting, the 70 percent/30 percent cost-sharing ratio of expenditures that is required by Sections II.C, II.G.1, and II.H.1 of this Agreement, in the following manner:

1. Cash Payments to the Corps of Engineers – The Board and SAFCA shall each pay or contribute its share directly to the Government as required by Article VI "Payment of Funds" of the PPA, and in accordance with **Exhibit E**. The Board shall pay 70 percent of the nonfederal share of costs for its portion of the payment and SAFCA shall pay 30 percent of the nonfederal share of costs for its portion of the payment.
2. Project Costs incurred by the Board – SAFCA will submit itemized invoices bearing the Agreement Number **xx/xx**, in triplicate, no more frequently than monthly in arrears, for its Project costs to Board addressed as follows:

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

If the SAFCA becomes an acquiring agency for Project rights of way, then the Board will pay the acquiring agency 70 percent of the expenditures for lands, easements, rights of way, and relocations as determined to be eligible for credit under Project requirements in accordance with the provisions of Article III of the PPA.

SAFCA will provide to the Board a summary of actual costs it has incurred for the Project on a quarterly basis each July, October, January, and April, until Project completion. The summary shall separate costs as follows: (1) cash payments, (2) relocation payments included in Corps construction contracts, (3) land costs, and (4) relocations performed by SAFCA as requested by the Government.

3. Project Costs incurred by the Board - Upon written request, SAFCA will pay to the Board 30 percent of the Board's expenditures for lands, easements, rights of way, and relocations for its share of the Project as determined to be eligible for credit under Project requirements in accordance with the provisions of Article V of the PPA within sixty (60) days following the Board's written request
- F. The Board and SAFCA share a common goal of maximizing the flexibility with which payments may be made pursuant to this Agreement. The parties intend to cooperate in Project funding based on appropriations available to them. In order that the Project is not delayed due to one party's funding constraints, any party may fund all or any percentage of the items above during the course of the Project, provided that the overall cost-sharing obligation is met, and with the understanding that payments made in excess of a party's obligation will be subject to reimbursement. Any reimbursement by the State shall be made only upon specific appropriation by the Legislature. Any reimbursement by the SAFCA shall be made only upon specific appropriation by SAFCA's Board of Directors.
- G. The estimated nonfederal cash contribution by federal fiscal year is shown on the appended **table**. In the event that SAFCA's cash contribution exceeds the State's reimbursement authority in any given year, SAFCA may make payments directly to the Government to meet the required cash contribution in accordance with Article VI.C of the PPA.
- H. If the Government, State, or SAFCA fail to make timely payments as required in the PPA, this Agreement will be subject to Termination or Suspension under the provisions of Article VII.A and VII.B of the PPA.

SECTION V: Disputes

Before either party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties. Any costs of dispute resolution shall be shared evenly by the parties. The existence of a dispute shall not excuse the parties from performance pursuant to the Agreement.

SECTION VI: Maintenance of Records; Audit

Within 60 days of the date of this Agreement, the Board and SAFCA 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 SAFCA 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 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. Pursuant to California Government Code-Section 8546.7, the parties shall be subject to the examination and audit by the State Auditor for the State of California for a period of three years after final payment under this Agreement.

SECTION VII: Final Accounting

The Board and SAFCA, 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 SAFCA for creditable Project costs.

SECTION VIII: Compliance with State and Federal Law

In carrying out the provisions of this Agreement, the Board agrees to comply with all applicable federal and State laws and regulations, including: Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 55000.11, 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 Handicapped in Programs and Activities Assisted or Conducted by the Department of the Army." In acquiring Project rights of way, SAFCA shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in Title 49, Part 24 of the Code of Federal Regulations, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Acts.

SECTION IX: Obligation of Future Appropriations

- A. Nothing in this Agreement shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State or the SAFCA Board of Directors.
- B. The Board intends to satisfy its obligations under this Agreement. The Board shall include in its budget requests or otherwise propose, for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The

Board reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Board shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Board is unable to satisfy its obligations hereunder, SAFCA may exercise any legal rights it has to protect SAFCA's interests related to this Agreement.

- C. In the event that SAFCA is unable to secure the appropriations for any year sufficient to make the payments necessary to fulfill the State's obligations hereunder, the State shall use its best efforts to satisfy any requirements for payments that are the obligation of SAFCA under this Agreement from any source of funds legally available for this purpose until such time as SAFCA funding is appropriated.

SECTION X: Term of Agreement; Amendment

The term of this Agreement shall be coextensive with that of the PPA, but the Agreement shall not become effective until approved by the California Department of General Services and the SAFCA Board of Directors. This Agreement may be amended only upon consent of all parties and the approval of the Department of General Services and the SAFCA Board of Directors. If the final PPA executed between the Government and SAFCA materially differs from the draft PPA that is attached as **Exhibit A** hereto, the Board and SAFCA agree to renegotiate those provisions of this Agreement that are affected by any changes in the final PPA.

SECTION XI: 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 Central Valley Flood Protection Board:

Executive Officer
The Central Valley Flood Protection Board
3310 El Camino Ave. Suite 170

Sacramento, CA 95821

If to SAFCA:

Executive Director
Sacramento Area Flood Control Agency
1007 7th Street, 7th floor
Sacramento, CA 95814-3407

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section. Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

SECTION XII: Standard Clauses

The Standard Clauses attached hereto as **Exhibit F**, Special Terms and Conditions for Department of Water Resources (Local Public Entities Receivables), are incorporated by this reference.

Officials of local agencies determined to be consultants under the Political Reform Act are required to file a Statement of Economic Interests with the Fair Political Practices Commission. The Standard Contract Provisions Regarding Political Reform Act Compliance, attached hereto as **Exhibit G**, are incorporated by this reference.

SECTION XIII: Severability

If any provision of this Agreement 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 be construed to remain fully valid, enforceable, and binding on the parties.

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

**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

**SACRAMENTO AREA FLOOD CONTROL
AGENCY, CALIFORNIA**

Approved for legal form and sufficiency

By: _____
Richard Johnson
Executive Director
Sacramento Area Flood Control Agency

M. Holly Gilchrist
Counsel
Sacramento Area Flood Control Agency

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CENTRAL VALLEY FLOOD PROTECTION BOARD
AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
THE AMERICAN RIVER WATERSHED, CALIFORNIA
FOLSOM DAM RAISE
FLOOD RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Engineer, the United States Army Corps of Engineers, Sacramento District, and the State of California acting by and through the Central Valley Flood Protection Board, represented by its Board President, and the Sacramento Area Flood Control Agency, represented by its Executive Director. The Central Valley Flood Protection Board and the Sacramento Area Flood Control Agency, are hereinafter referred to as the “Non-Federal Sponsors”.

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed project (hereinafter the “Authorized Project”) was authorized by Section 128 of the Energy and Water Development Appropriations Act of 2004, Public Law 108-137;

WHEREAS, the Government and Non-Federal Sponsors desire to enter into a Project Partnership Agreement to construct the Folsom Dam Raise flood risk management project a separable element of the Authorized Project (hereinafter the “Project”, as defined in Article I.A. of this Agreement);

WHEREAS, Folsom Dam is managed, operated, and maintained by the United States Bureau of Reclamation (hereinafter the “Bureau”) pursuant to Federal reclamation law, and the Bureau and the Non-Federal Sponsors entered into an agreement on _____, 2019 (hereinafter the “OMRR&R Agreement”) for Non-Federal Sponsors to pay the Bureau any additional costs associated with operation, maintenance, repair, rehabilitation, and replacement of the 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 the Project;

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsors' full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – DEFINITIONS

A. The term “Project” means the flood risk management separable element which consists of the major flood damage reduction component of the plan to raise the height of Folsom Dam by a combination of modifications, as generally described in the Report of the Chief of Engineers to Congress dated November 5, 2002, and approved by the Chief of Engineers on November 5, 2002.

B. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

C. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

D. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

E. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Sacramento District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

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

G. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

H. The term “additional work” means items of work related to, but not cost shared as a part of, the Project that the Government will undertake on the Non-Federal Sponsors’ behalf while the Government is carrying out the Project, with the Non-Federal Sponsors responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall complete design and undertake construction of the Project. As of the effective date of this Agreement, the amount of BBA 2018 funds available for the Project is estimated at \$216,523,185.

B. No later than 30 days after the effective date of this Agreement, the Non-Federal Sponsors shall provide to the Government any outstanding non-Federal share of design costs, currently estimated at \$21,800,219, for the costs of design incurred prior to execution of the Design Agreement, dated June 12, 2017, by delivering a check payable to “FAO, USAED, Sacramento (L2)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

C. In accordance with Article III, the Non-Federal Sponsors shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project.

D. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, 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 Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be

applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsors from voluntarily contributing costs associated with data recovery that exceed 1 percent.

F. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsors in writing. The Non-Federal Sponsors in accordance with the OMRR&R Agreement shall pay the Bureau any additional costs required by the Bureau to operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsors and the Bureau with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual and copies of all as-built drawings for the completed work.

G. Not less than once each year, the Non-Federal Sponsors shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsors shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsors shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsors shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. For real estate interests owned or controlled by the Non-Federal Sponsors, the Non-Federal Sponsors shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. The Non-Federal Sponsors shall not use Federal program funds to meet any of their 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.

M. 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: Section 601 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.

N. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsors may establish a Project Coordination Team to discuss significant issues or actions. The Non-Federal Sponsors shall be solely responsible for any costs it incurs for participation in the Project Coordination Team, without reimbursement by the Government.

O. The Non-Federal Sponsors may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsors. Each request shall be subject to review and written approval by the Division Commander for South Pacific Division (hereinafter the "Division Commander"). If the Government agrees to such request, the Government shall provide written notice to the Non-Federal Sponsors of the amount of funds required to cover such costs in advance of the Government performing such work.

1. As of the effective date of this Agreement, the costs for betterments are projected to be \$0 and the costs for additional work are projected to be \$0. Such costs are not included as part of the estimated total cost of the Project.

2. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments or additional work, 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 (L2)" to the District Commander, 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 such costs, the Non-Federal Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. If any real property interests other than those owned or controlled by the Bureau are required for construction, operation, and maintenance of the Project, the Government, after consultation with the Non-Federal Sponsors, shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such real property interests and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition. The Non-Federal Sponsors shall acquire such real property interests and shall provide the Government with

authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsors shall ensure that any real property interests they provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsors with a written notice to proceed with such improvements. The Non-Federal Sponsors shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. The Non-Federal Sponsors shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsors written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsors may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government, in its sole discretion, agrees to such a request, the Government, on behalf of the Non-Federal Sponsors, shall acquire such real property interests, construct such placement area improvements, and perform such relocations using BBA 2018 funds, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsors except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsors by quitclaim deed or deeds. The Non-Federal Sponsors shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsors does not alter the Non-Federal Sponsors' responsibility under Article IV for the costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsors assure that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsors

will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsors shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsors without reimbursement by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsors fail to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors’ responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal Sponsors and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - REIMBURSEMENT

A. The Government, in accordance with the provisions of this Article and subject to the availability of BBA 2018 funds, shall reimburse the Non-Federal Sponsors for costs it incurs to acquire real property interests from private owners, to construct placement area improvements, to perform relocations, and to conduct investigations for hazardous substances determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the private owner, whichever occurs later, the Non-Federal Sponsors shall provide the Government with documents sufficient to determine the amount of reimbursement to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to determine the amount of reimbursement to be provided for other reimbursable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsors agree that the amount of costs eligible for reimbursement shall be determined and reimbursed in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article IX.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. Only costs associated with real property interests acquired from private owners after the effective date of this Agreement are eligible for reimbursement. The Non-Federal Sponsors shall obtain, for each real property interest acquired from a private owner, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsors provide the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsors are unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for reimbursement purposes.

(3) The Government shall reimburse the Non-Federal Sponsors the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsors exceed the approved appraised amount, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the appraised amount for reimbursement purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall notify the Government in writing of their intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsors shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsors shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsors may use the amount set forth in their appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for reimbursement purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the private owner is donating the real property interest to the Non-Federal Sponsors and releases the Non-Federal Sponsors in writing from their obligation to appraise the real property interest, and the Non-Federal Sponsors submit to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsors determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsors determine that an appraisal is unnecessary, the Non-Federal Sponsors shall prepare the written waiver valuation required by 49 C.F.R. Section

24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsors must offer the private owner the option of having the Non-Federal Sponsors appraise the real property interest.

d. Incidental Costs. The Government shall reimburse the Non-Federal Sponsors for incidental costs, documented to the satisfaction of the Government, that it incurs in acquiring from private owners any real property interests required pursuant to Article III for the Project. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, it incurs in constructing the placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for reimbursement. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, that it incurs in performing relocations directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for reimbursement.

a. For a relocation other than a highway, the costs eligible for reimbursement shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. Investigations for Hazardous Substances. The Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, it incurs in

conducting investigations for hazardous substances in accordance with Article IV.A. Only investigations for hazardous substances performed after the effective date of this Agreement are eligible for reimbursement.

5. Compliance with Federal Labor Laws. Any reimbursement afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project, any costs incurred by the Non-Federal Sponsors using Federal program funds, any costs incurred prior to the effective date of this Agreement, or real property interests (other than those acquired through relocations) that are owned or controlled by public entities.

ARTICLE VI - 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 construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available in BBA 2018 for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsors in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. 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 VII - HOLD AND SAVE

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

ARTICLE VIII - 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 IX - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to Project 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 Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations.

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 by the Government.

ARTICLE X - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors both act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. No 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 XI - 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsors:

Central Valley Flood Protection Board

President, Central Valley Flood Protection Board

3310 El Camino Avenue, Suite 170

Sacramento, CA 95821

Sacramento Area Flood Control Agency

Executive Director, Sacramento Area Flood Control Agency

1007 7th Street, 7th Floor

Sacramento, CA 95814

If to the Government:

District Commander

U.S. Army Corps of Engineers,

Sacramento District

1325 J Street

Sacramento, CA 95814-2922

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

ARTICLE 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.

ARTICLE XIII - 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 a party to this Agreement.

ARTICLE XV - 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 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 XVI - 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 either 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, the United States Army Corps of Engineers, Sacramento District.

DEPARTMENT OF THE ARMY

CENTRAL VALLEY FLOOD PROTECTION
BOARD

BY: _____

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

BY: _____

William H. Edgar
President, Central Valley
Flood Protection Board

DATE: _____

DATE: _____

SACRAMENTO AREA FLOOD CONTROL
AGENCY

BY: _____

Richard M. Johnson
Executive Director, Sacramento Area
Flood Control Agency

EXHIBIT B



FOLSOM DAM RAISE PROJECT
ALLOCATION TABLE DAM RAISE
Federal/Non-Federal Allocation of Funds for Dam Raise PPA - FRM Features
Exhibit D

Funding Type	Year	TPC	Non-Fed/ LERRDs	Sched Const	Percentage	Non-Fed Cash	IKC+LERRDs	Non-Fed Total	Fed Cash	"Supplemental" (PL 115-123 funds)
PED thru	Prior to Year 1 of									
2018 Federal	Construction	\$ 47,001,806	\$ -	\$ -		\$ -	\$ -	\$ -	\$ 47,001,806	\$ -
2019 Federal	1	\$ 33,754,521	\$ 28,264,715	\$ 5,489,806		\$ 22,264,715	\$ 3,325,000	\$ 25,589,715	\$ 5,489,806	\$ -
Cost Share Total		\$ 80,756,328	\$ 28,264,715	\$ 5,489,806		\$ 22,264,715	\$ 3,325,000	\$ 28,264,715	\$ 52,491,613	\$ -
2019 PL 115-123	1	\$ 3,903,616	\$ -	\$ 3,903,616	2%	\$ -	\$ -	\$ -	\$ -	\$ 3,903,616
2020 PL 115-123	2	\$ 8,165,001	\$ -	\$ 8,165,001	4%	\$ -	\$ -	\$ -	\$ -	\$ 8,165,001
2021 PL 115-123	3	\$ 142,244,568	\$ -	\$ 142,244,568	66%	\$ -	\$ 1,100,000	\$ -	\$ -	\$ 141,144,568
2022 PL 115-123	4	\$ 27,770,000	\$ -	\$ 27,770,000	13%	\$ -	\$ 2,600,000	\$ -	\$ -	\$ 25,170,000
Out years PL 115-123	5	\$ 34,440,000	\$ -	\$ 34,440,000	16%	\$ -	\$ -	\$ -	\$ -	\$ 34,440,000
PL 115-123 Funds Total		\$ 216,523,185		\$ 216,523,185		\$ -	\$ 3,700,000	\$ -	\$ -	\$ 212,823,185
Grand Total		\$ 297,279,513	\$ 28,264,715	\$ 222,012,991	100%	\$ 22,264,715	\$ 7,025,000	\$ 57,554,429	\$ 52,491,613	\$ 216,523,185

Notes: Givens: Non-Fed LERRDs and Sched Const;
 TPC = Sunk cost + LERRDs + IKC + Sched Const
 Prior to Year 1 of Construction represents all "sunk" PED Costs.
 FY 19 Sunk costs are based on 2101 and estimated Non-Fed cost Share.
 Percentage is based on the proportion of scheduled construction cost in the given year to total construction costs
 Non-Fed cash based on estimated cost and allocations sheet for

Exhibit E

Budget Detail And Payment Provisions

- I. **INVOICING AND PAYMENT:** Method of payment shall be in accordance with provisions stated in Section III on page 8 of this Agreement.
- II. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or delegated by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

**EXHIBIT F –Special Terms and Conditions for
Department of Water Resources
Local Project Partnership Agreement (LPPA)**

1. WORKER'S COMPENSATION CLAUSE: Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.
2. 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.
3. 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.
4. 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.
5. AVAILABILITY OF FUNDS: Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
6. AMERICANS WITH DISABILITIES ACT: By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
7. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
8. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace,
 2. The person's or organization's policy of maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation and employee assistance programs, and
 4. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed contract or grant:
 1. Will receive a copy of the company's drug-free policy statement, and
 2. Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

This contract or grant may be subject to suspension of payments or termination, or both, and the Contractor or grantee may be subject to debarment if the department determines that: (1) the Contractor or grantee has made a false certification, or (2) the Contractor or grantee violates the certification by failing to carry out the requirements noted above.

9. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
10. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
11. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
12. SUBCONTRACTING: The Contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified in the bid or agreed to during negotiations for this Agreement, or as are specifically authorized by the Contract Manager during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates or consultants shall be subject to the prior written approval of the Contract Manager. Contractor warrants, represents and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable laws, codes, rules and regulations in the performance of this Agreement. Should State determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the contract terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, State may request substitution of the subcontractor.
13. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
14. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 9557 is attached to this Exhibit and made part of this contract by this reference.
15. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: N/A
16. 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 (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 (Government Code Section 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.

17. TIMELINESS: Time is of the essence in this Agreement.
18. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
19. 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.
20. 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 (Government Code Section 4554).
21. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance therewith, 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."
22. 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 effected thereby.
23. PRIORITY HIRING CONSIDERATION: If this Contractor includes 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.

24. UNION ORGANIZING: For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement, Contractor hereby acknowledges the applicability of Government Code Section 6645 through Section 16649 to this agreement and agrees to the following:

- a. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - b. No state funds received under this agreement will be used to assist, promote or deter union organizing.
 - c. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
 - b. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.
25. CONTRACTOR COOPERATION DURING INVESTIGATION: Contractor agrees to cooperate fully in any investigation conducted by or for DWR regarding unsatisfactory work or allegedly unlawful conduct by DWR employees or DWR contractors. The word "cooperate" includes but is not limited to, in a timely manner, making Contractor staff available for interview and Contractor records and documents available for review.
26. CONFLICT OF INTEREST:

- a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

(1) Current State Employees: (PCC §10410)

- (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

(2) Former State Employees: (PCC §10411)

- (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (c) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

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

c. Members of Boards and Commissions:

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

a. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition for Consulting Services Contracts:

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

27. ORDER OF PRECEDENCE: In the event of any inconsistency between the terms, specifications, provisions or attachments which constitute this Contract, the following order of precedence shall apply:

- a) The Std. 213;
- b) The Scope of Work;
- c) Any other attachments incorporated in the Contract by reference.

Exhibit G

Standard Contract Provisions **Regarding Political Reform Act** **Compliance**

1. POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code section 82048 and California Code of Regulations, title 2, section 18701. Accordingly, as specified by DWR, such persons shall complete and submit to the DWR Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement, updated both annually and when changes in key staff or duties occur. The financial interests disclosed shall be for Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at: www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC). A leaving office statement must also be filed upon completion of all contract assignments.
- b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code section 87100. Contractor shall notify DWR immediately of any potentially disqualifying conflict of interest. Government Code section 87100 provides:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
 - (1) Failure to complete and submit all required Form 700s within the 30- day period as required in paragraph A above, or respond to any request from the DWR Personnel Officer for additional information regarding any such Form 700s;

- (2) Failure to notify DWR of a potentially disqualifying conflict of interest;
- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code section 87100 provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.