

Board Packet for

Agenda Item 9B

Consider adoption of Resolution No. 2019-03 to approve the Project Partnership Agreement (PPA) between the Board, U.S. Army Corps of Engineers, and Sacramento Area Flood Control Agency (SAFCA) and the Local Project Partnership Agreement (LPPA) between the Board and SAFCA, for the American River Common Features Flood Risk Management (ARCF 2016) Project.

Project Partnership Agreement and Local Project Partnership Agreement

American River Common Features (ARCF 2016) Flood Risk Management Project

Meeting of the Central Valley Flood Protection Board

January 25, 2019

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**Meeting of the Central Valley Flood Protection Board
January 25, 2019**

Staff Report

**American River Common Features (ARCF 2016) Flood Risk Management Project
Adoption of Project Partnership Agreement and Local Project Partnership
Agreement**

1.0 ITEM

Consider adoption of Resolution 2019-03 (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 Common Features 2016 Flood Risk Management Project (ARCF 2016) 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 ARCF 2016 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

ARCF 2016 will include the City of Sacramento, Sacramento River Bypass Weir, Arcade Creek, Magpie Creek, left bank of the Sacramento River between RM 45.5 and RM 60, and areas along the North and South Banks of the American River.

4.0 PROJECT DESCRIPTION

ARCF 2016 includes the construction of levee improvement measures to address seepage, stability, erosion and overtopping concerns identified for the East levee of the Sacramento River downstream of the American River to Freeport, East levee of the

Natomas East Main Drainage Canal (NEMDC), Arcade Creek, and Magpie Creek, as well as erosion control measures for specific locations along the American River, and widening of the Sacramento Weir and Bypass to deliver more flood flows into the Yolo Bypass, as generally described in the American River Watershed Common Features General Reevaluation Report, dated December 2015 and approved by the Chief of Engineers on April 26, 2016.

5.0 PROJECT BACKGROUND

In February 1986, the Sacramento area experienced a very large storm event, which rapidly filled Folsom reservoir just upstream from the City of Sacramento. Because of the rapid inflow, the Dam operators agreed that the release from Folsom Dam needed to be raised above the objective release of 115,000 cfs to manage the risk. The release from Folsom Dam was increased to 134,000 cfs. This flow was selected to balance the risk between having to shortly thereafter make a larger release than 134,000 cfs and causing further risk to the levees versus managing the risk of a dam failure. This flow seriously stressed the American River levees and came dangerously close to causing levee failures into the City of Sacramento.

After the storm event of 1986, Congress directed the USACE to investigate the feasibility of reducing the flooding risk of the City of Sacramento. The USACE completed that feasibility study in 1991. The recommended plan in this study was a concrete gravity flood detention dam at the Auburn Dam location along with levee improvements downstream of Folsom Dam. Due to environmental and cost concerns, Congress chose not to authorize the detention dam and instead directed the USACE to supplement the analysis of flood control options considered in the 1991 study. This supplemental study was completed in 1996.

The additional analyses requested by Congress were presented in the Supplemental Information Report American River Watershed Project, California, dated March 1996. This report also recommended a concrete gravity flood detention dam at the Auburn site along with levee improvements downstream of Folsom Dam. Other plans evaluated in the report were Folsom Dam improvements and a stepped release plan for Folsom Dam releases. These additional plans also included levee improvements downstream of Folsom Dam. Congress recognized that levee improvements were “common” to all candidate plans in the report and that there was a Federal interest in participating in these “common features.” Thus, the American River Common Features Project was authorized and a decision on Auburn Dam was once again deferred to a later date.

Congress authorized improvements for Folsom Dam in 1999. By doing this, improvements to levees downstream of Folsom Dam could be fine-tuned to work closely with the Folsom Dam improvements being discussed by Congress. The improvements being discussed for Folsom Dam involved control of a 200-year flood event with a peak release of 160,000 cfs. Therefore, the Common Features project was modified by the Water Resources Development Act (WRDA) 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 Corps 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 Raise Project was subsequently authorized by Congress in the Energy and Water Development Appropriations Act for 2004. The Folsom Dam Modification construction was completed in 2017. The Folsom Dam Raise project is being designed and scheduled to start construction in 2020.

Major construction components for Common Features in the WRDA 1996 authorization include construction of seepage remediation along approximately 22 miles of American River levees and construction of levee strengthening and raising of 12 miles of Sacramento River levees in Natomas. Major construction components for Common Features in the WRDA 1999 authorization include construction of seepage remediation and levee raises along four stretches of the American River, and construction of levee strengthening and raising of 5 miles of Natomas Cross Canal levee in Natomas. Note that there are other construction components for both WRDA 1996 and 1999 that are not described here. All American River features authorized in WRDA 1996 and 1999 were completed by fall 2015. Natomas features were analyzed in the Natomas Post-Authorization Change Request (PACR) completed in 2010. The recommendations included in that report were authorized in the Water Resources Reform and Development Act (WRRDA) 2014 and design and construction work has begun.

The General Reevaluation Report (GRR) for the ARCF Sacramento Area was completed in 2015 and the Chief Report was delivered to the US Congress in 2016. The construction of the Locally Preferred Plan (LPP) for ARCF flood risk management project was authorized by Section 1401(2)(7) of WRDA 2016, Public Law 114-322. In 2018, the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter "BBA 2018"), provided \$1,565,750,000 to USACE to undertake construction of the ARCF 2016 as limited by the costs of the National Economic Development (NED) Plan, and the Non-Federal Sponsors acknowledge that they will not be financing their required non-Federal cash contribution as allowed under the provisions of BBA 2018.

6.0 AUTHORITIES

Federal:

- WRDA of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended. Amendments to this authority are as follows:
 - 1) Section 366 of WRDA of 1999 (Pub. L. 106-53, § 366, 113 Stat. 269, 319-20 (1999));
 - 2) Section 129 of the Energy and Water Development Appropriations Act (EWDAA) of 2004 (Pub. L. No. 108-137, §129, 117 Stat. 269, 1839 (2003));
 - 3) Section 130 of the Consolidated Appropriations Act (CAA) of 2008 (Pub. L. No. 110-161, § 130, 121 Stat. 1844, 1947 (2007)); and
 - 4) Section 7002 of the WRRDA of 2014 (Pub. L. No. 113-121, §7002, 128 Stat. 1193, 1366 (2014)).
- Section 1401(2)(7) of the of 2016, Public Law 114-322

State:

- California Water Code Sections 8617.1, 12657, 12670.10, 12670.11, 12670.12, and 12670.14

7.0 FUNDING STATUS

The project will follow a typical cost split of 65% Federal, 35% Non-Federal, with the exception of the widening of the Sacramento River Bypass Weir, which will be solely funded by the Non-Federal Sponsors. The total design and construction costs are projected to be \$1,851,993,000 with the USACE's share of such costs projected to be \$1,038,310,000 the Non-Federal Sponsors' (the Board and SAFCA, collectively) share of such costs projected to be \$813,683,000. The Non-Federal Sponsors' share includes \$559,090,000 for the cost split, and 254,593,000 for the widening of the Sacramento River Bypass Weir. 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) and SAFCA for the Board's consideration. The PPA establishes obligations of the federal (USACE) and non-federal (State and SAFCA) parties agreeing to construct ARCF 2016. The PPA includes a Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability. The PPA establishes a 65 percent cost share for the Federal

sponsor (USACE) and a 35 percent cost share for the Non-Federal sponsors, with the exception of the widening of the Sacramento River Bypass Weir, which will be fully funded by 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 sponsor's 35 percent cost share. The State cost-share will be paid from existing Proposition 1E bond funds and future general fund appropriations.

9.0 ENVIRONMENTAL ANALYSIS

The American River Watershed Common Features General Reevaluation Report Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR) (State Clearinghouse Number 2005072046) was jointly prepared by the USACE as National Environmental Policy Act (NEPA) lead agency and the Board as the California Environmental Quality Act (CEQA) lead agency. This environmental document was certified by the Board in 2016.

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 EIS/EIR (2016), the Board fully complied with CEQA. The Board, through its actions on April 22, 2016, when it approved the project, included adopting all required CEQA Findings, MMRPs, and Statement of Overriding Considerations, has identified, disclosed and adopted the mitigation measures recommended in the EIS/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 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. Since the EIS/EIR was finalized, there have been no substantial changes in project circumstances that would require major revisions to the EIS/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 EIS/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.

10.0 STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution 2019-03 (in substantially the form provided in Attachment A), which:

Approves:

- The Project Partnership Agreement in substantially the form provided
- The Local Project Partnership Agreement in substantially the form provided; and

Delegate:

- The Board President to sign the Agreements.

11.0 LIST OF ATTACHMENTS

- A. Resolution 2019-01
- B. Project Partnership Agreement and Exhibits
 - a. Certificate of Authority
 - b. Certification Regarding Lobbying
 - c. Non-Federal Sponsor's Self-Certification of Financial Capability
- C. Local Project Partnership Agreement and Exhibits
 - a. Exhibit A – Project Partnership Agreement
 - b. Exhibit B - Site Map
 - c. Exhibit C - Allocation Table for American River Common Features (WRDA 2016) Project.
 - d. Exhibit D - Budget Detail and Payment Provision
 - e. Exhibit E - General Terms and Conditions for Department of Water Resources (Local Public Entities Receivables)
 - f. Exhibit F - Standard Contract Provisions Regarding Political Reform Act Compliance
 - g. Exhibit G - Construction Cost, OMRR&R, State and SAFCA Share Table
 - h. Exhibit H - Sacramento Weir and Bypass Features map

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
THE AMERICAN RIVER COMMON FEATURES 2016
FLOOD RISK MANAGEMENT PROJECT (ARCF 2016)
PROJECT PARTNERSHIP AGREEMENT
RESOLUTION 2019-03

WHEREAS, the American River Common Features 2016 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 the Sacramento Area Flood Control Agency (SAFCA) to reduce flood risk for Sacramento County by the construction of levee improvement measures to address seepage, stability, erosion and overtopping concerns identified for the East levee of the Sacramento River downstream of the American River to Freeport, East levee of the Natomas East Main Drainage Canal (NEMDC), Arcade Creek, and Magpie Creek, as well as erosion control measures for specific locations along the American River, and widening of the Sacramento Weir and Bypass to deliver more flood flows into the Yolo Bypass; and

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the “USACE”), represented by the U.S. Army Corps of Engineers, Sacramento District (hereinafter the “District Engineer”) is the Federal Sponsor for the Project. The State of California’s Central Valley Flood Protection Board (hereinafter the “Board”), represented by the Board President, and the Sacramento Area Flood Control Agency (hereinafter the “SAFCA”), represented by the Executive Director, are the Non-Federal Sponsors for the Project (hereinafter the “Non-Federal Sponsors”); and

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

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

WHEREAS, the Continuing Appropriations Act for 1988 (Public Law (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;

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 and construction of the Project for California flood damage reduction and ecosystem restoration;

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;

WHEREAS, the State of California, Department of Water Resources (“DWR”) has commenced design of portions of the Project and intends to enter into a Section 221 Memorandum of Agreement with the Government;

WHEREAS, the Board, as CEQA lead agency, certified the American River Watershed Common Features General Reevaluation Report Final EIS/EIR (SCH No. 2005072046) (June 2016) including Findings of Fact, Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan (MMRP), and filed a Notice of Determination (NOD) on June 9, 2016, and approved the Project;

WHEREAS, based on the Project’s primary project purpose of flood damage reduction, the parties agree that the Non-Federal Sponsors shall contribute 35 percent of the total design and construction costs with the exception of the widening of the Sacramento River Bypass and Weir, which will be solely funded by the Non-Federal Sponsors;

WHEREAS, SAFCA has commenced design and construction of portions of the Project pursuant to Memoranda of Agreement with the Government dated August 14, 2015 and June 15, 2018;

WHEREAS, on August 29, 2017 SAFCA entered into a Design Agreement with USACE titled “Design Agreement Between the Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Common Features Project”;

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.

WHEREAS, the Non-Federal Sponsors’ obligations are set forth in the Local Project Partnership Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Finds analysis contained in the 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 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 the 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 COMMON FEATURES 2016
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 Commander for the Sacramento District, and 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 locally preferred plan for the American River Common Features flood risk management project located within the metropolitan area of Sacramento, California (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was authorized by Section 1401(2)(7) of the Water Resources Development Act of 2016, Public Law 114-322;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Non-Federal Sponsors are responsible for 100 percent of the construction costs in excess of that required for construction of the national economic development plan (hereinafter the “NED Plan”, as defined in Article I.B. of this Agreement);

WHEREAS, appropriations provided under the Construction heading, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter “BBA 2018”), currently estimated at \$1,565,750,000, are available to undertake construction of the Project as limited by the costs of the NED Plan, and the Non-Federal Sponsors acknowledge that they will not be financing their required non-Federal cash contribution as allowed under the provisions of BBA 2018;

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 locally preferred plan (LPP) consisting of the construction of levee improvement measures to address seepage, stability, erosion and overtopping concerns identified for the East levee of the Sacramento River downstream of the American River to Freeport, East levee of the Natomas East Main Drainage Canal (NEMDC), Arcade Creek, and Magpie Creek, as well as erosion control measures for specific locations along the American River, and widening of the Sacramento Weir and Bypass to deliver more flood flows into the Yolo Bypass, as generally described in the American River Watershed Common Features General Reevaluation Report, dated December 2015 and approved by the Chief of Engineers on April 26, 2016. (hereinafter the "Decision Document"). Authorization of the LPP includes 1 mile of levee raise compared to the 7 miles of levee raises included in the National Economic Development (NED) plan.

B. The term "NED Plan" means the national economic development plan consisting of the construction of levee improvement measures to address seepage, stability, erosion and overtopping concerns identified for the East levee of the Sacramento River downstream of the American River to Freeport, East levee of the Natomas East Main Drainage Canal (NEMDC), Arcade Creek, and Magpie Creek, as well as erosion control measures for specific locations along the American River, as generally described in the Decision Document.

C. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsors in accordance with the terms of this Agreement that are directly related to design and construction of the Project. The term includes, but is not necessarily limited to: the Government's costs and the Non-Federal Sponsors' creditable contributions pursuant to the terms of the Design Agreement executed on August 28, 2017; the costs of historic preservation activities except for data recovery for historic

properties; the Government's costs of engineering, design, and construction; the Government's supervision and administration costs; the Non-Federal Sponsors' creditable costs for providing real property interests, placement area improvements, relocations and in-kind contributions that are allocated by the Government to the NED Plan; and the costs incurred by the Non-Federal Sponsors for the real property interests, placement area improvements, relocations, and design and construction work that are allocated by the Government to the LPP incremental costs. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation by the Government and the Non-Federal Sponsors in the Project Coordination Team to discuss significant issues and actions; audits; additional work; or betterments; or the Non-Federal Sponsors' cost of negotiating this Agreement.

D. The term "NED Plan costs" means the sum of all construction costs that would have been incurred by the Government and Non-Federal Sponsors had the NED Plan been constructed.

E. The term "LPP incremental costs" means construction costs of the Project that are in excess of the NED Plan costs, as determined by the Government.

F. 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.

G. 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.

H. 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.

I. 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.

J. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsors for the NED Plan that are identified as being integral to the Project by the Division Commander for South Pacific Division (hereinafter the "Division Commander"). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction

of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsors for the NED Plan to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the NED Plan.

K. 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.

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

M. 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 undertake construction of the Project using funds provided in BBA 2018 and funds provided by the Non-Federal Sponsors.

B. The Non-Federal Sponsors shall contribute a minimum of 35 percent, up to a maximum of 50 percent, of the NED Plan costs, and 100 percent of the LPP incremental costs, as follows:

1. The Non-Federal Sponsors shall pay 5 percent of NED Plan costs, with an estimated \$1,520,000 in funds already provided by the Non-Federal Sponsors pursuant to the Design Agreement creditable toward that amount.

2. 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. If the Government determines that the Non-Federal Sponsors’ estimated credits for real property interests, placement area improvements, and relocations allocated by the Government to the NED Plan will exceed 45 percent of NED Plan costs, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as a part of the Government’s cost of construction. Nothing in this provision affects the Non-Federal Sponsors’ responsibility under Article IV for the costs of any cleanup and response related thereto.

3. In providing in-kind contributions, the Non-Federal Sponsors shall obtain all applicable licenses and permits necessary for such work. As functional

portions of the work are completed, the Non-Federal Sponsors shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsors shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

4. After determining the amount to meet the 5 percent required by paragraph B.1., above, for the then-current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsors pursuant to paragraphs B.2. and B.3., above, that are allocated by the Government to the NED Plan costs, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsors to meet their minimum 35 percent cost share of the NED Plan costs for the then-current fiscal year. No later than 90 calendar days after receipt of notification from the Government, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.

5. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsors with a written estimate of the full amount of funds required from the Non-Federal Sponsors during that fiscal year to meet their cost share for the NED Plan costs. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.

6. After considering the real property interests, placement area improvements, relocations, and design and construction work provided by the Non-Federal Sponsors for the Project that are determined by the Government to be in excess of that required for the NED Plan, the Government shall determine the funds required from the Non-Federal Sponsors to cover the remaining LPP incremental costs, and the Non-Federal Sponsors shall provide such funds in advance of the Government performing the work in accordance with Article VI.F.

C. 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.

D. 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.

E. 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 and the Non-Federal Sponsors, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government in the OMRR&R Manual. The Government and the Non-Federal Sponsors shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsors now or hereafter own or control to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsors are failing to perform their obligations under this Agreement and the Non-Federal Sponsors do not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsors of their obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

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

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

H. 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.

I. 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.

J. 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.

K. 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.

L. In carrying out their 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.

M. 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 Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsors' costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

N. 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. If the Government agrees to such request, the Non-Federal Sponsors, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

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

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsors must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition. The Non-Federal Sponsors shall acquire the 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 real property interests 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 agrees to such a request, the Non-Federal Sponsors, in

accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, 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 or credit 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 - DOCUMENTATION OF CONSTRUCTION COSTS AND CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs the creditable NED Plan costs and LPP incremental costs incurred by the Non-Federal Sponsors in accordance with the provisions of this Article.

B. Documentation of Construction Costs.

1. NED Plan costs. 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 owner, whichever occurs later, the Non-Federal Sponsors shall provide the Government with documents sufficient to determine the amount of credit to be provided for the privately owned real property interests for the NED Plan costs 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 credit to be provided for other creditable items allocated to the NED Plan in accordance with paragraph C. of this Article.

2. LPP incremental costs. To the maximum extent practicable, the Non-Federal Sponsors shall provide the Government with documentation of LPP incremental costs incurred no less frequently than on a quarterly basis for inclusion in the total construction costs. Such documentation may include invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees; and eligible payments for privately owned real property interests, including appraisals, and eligible incidental acquisition costs, and for providing placement area improvements, relocations, and design and construction work. Only LPP incremental costs incurred after the effective date of this Agreement are included in the construction costs, unless such costs were required for work covered by an In-Kind Memorandum of Understanding (hereinafter "In-Kind MOU"). The Government may audit such costs in accordance with Article X.B. to determine reasonableness, allocability, and allowability.

C. The Government and the Non-Federal Sponsors agree that the amount of costs eligible for credit that are allocated by the Government to the NED Plan costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.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 and allocated to the NED Plan are eligible for credit, unless such real property interests acquired from private owners were required for in-kind contributions covered by an In-Kind MOU. 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. For any real property interests acquired from private owners that are required for in-kind contributions covered by an In-Kind MOU, the date of initiation of construction shall be used to determine the fair market value. 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 crediting purposes.

(3) The Government shall credit 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 crediting 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 crediting 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 include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the incidental costs the Non-Federal Sponsors incurred in acquiring from private owners any real property interests required pursuant to Article III for the NED Plan, that are documented to the satisfaction of the Government. Only incidental costs incurred after the effective date of this Agreement are eligible for credit, unless such incidental costs were required for in-kind contributions covered by an In-Kind MOU. 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 include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of placement area improvements required for the NED Plan. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurred to provide any placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for credit, unless such placement area improvements were required for in-kind contributions covered by an In-Kind MOU. 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 include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of any relocations performed by the Non-Federal Sponsors that are directly related to construction, operation, and maintenance of the NED Plan. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind MOU.

a. For a relocation other than a highway, the value 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. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of in-kind contributions allocated to the NED Plan that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind MOU between the Government and Non-Federal Sponsors; or for costs that exceed the Government's

estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit 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 credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project; for real property interests (other than those acquired through relocations) that are owned or controlled by public entities; or for any amount that exceeds the value of real property interests, relocations, placement area improvements, or in-kind contributions allocated by the Government to the NED Plan.

ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total construction costs for the Project are projected to be \$1,851,993,000, with NED Plan costs projected to be \$1,597,400,000, and LPP incremental costs projected to be \$254,593,000. The Government share of the NED Plan costs are projected to be \$1,038,310,000, and the Non-Federal Sponsors' share of the NED Plan costs are projected to be \$559,090,000, which includes the 5 percent contribution of funds projected to be \$79,870,000, creditable real property interests, relocations, and placement area improvements projected to be \$265,071,000, creditable in-kind contributions projected to be \$121,088,000, and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$93,061,000. The LPP incremental costs provided by the Non-Federal Sponsors include real property interests, relocations, and placement area improvements projected to be \$36,780,000, design and construction work projected to be \$169,232,000, and a contribution of funds projected to be \$105,621,000. Costs for betterments are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Government shall provide the Non-Federal Sponsors with monthly reports setting forth the estimated construction costs, NED Plan costs, and the Government's and Non-Federal Sponsors' estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsors funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated

amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsors during the upcoming fiscal year.

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

D. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors’ required share of such construction costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds required. Within 90 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds.

E. Upon completion of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 90 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsors’ responsibility to pay their share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsors exceed the amount of funds required to meet their share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund. In addition, if the final accounting determines that the Non-Federal Sponsors’ credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed their share of construction costs for the NED Plan, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsors.

F. If there are real property interests, placement area improvements, relocations, additional work, or betterments provided on behalf of the Non-Federal Sponsors, or LPP incremental costs, the Government shall provide written notice to the Non-Federal Sponsors of the amount of funds required to cover such costs. No later than 90 calendar days of receipt of such written notice, 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 VII - 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 there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsors to allow construction to resume.

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 VIII - 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 IX - 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 X - 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 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. The Government's costs of audits shall not be included in construction costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

ARTICLE XI - 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 XII - 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:

President, Central Valley Flood Protection Board
Central Valley Flood Protection Board
3310 El Camino Avenue, #Ste. 170
Sacramento, CA 95821
And

Executive Director, Sacramento Area Flood Control Agency
Sacramento Area Flood Control Agency
1007 7th Street, Floor 7
Sacramento, CA 95814

If to the Government:

District Commander, Sacramento District
1325 J Street
Sacramento, CA 95814

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 XIII - 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 XIV - 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 Commander.

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 of the State of California Central Valley Flood Protection Board, that the State of California Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency in connection with the American River Common Features, WRDA 2016 Project, California, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. Section 1962d-5b), and that the person who executed the Agreement on behalf of the State of California Central Valley Flood Protection Board acted within his statutory authority.

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

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

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of 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 Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency in connection with the American River Common Features, WRDA 2016 Project, California, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. Section 1962d-5b), and that the person who executed the Agreement on behalf of the Sacramento Area Flood Control Agency acted within his 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: _____

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 AGREEMENTS**

I, Leslie 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 Common Features, WRDA 2016 Project; 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 California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for the American River Common Features, WRDA 2016 Project, California .

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

BY: _____

TITLE: Executive Officer

DATE: _____

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

I, Richard M. Johnson, do hereby certify that I am the Executive Director of the Sacramento Area Flood Control Agency (SAFCA) (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the American River Common Features, WRDA 2016 Project, California ; 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 California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for the American River Common Features, WRDA 2016 Project, California .

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

BY: _____

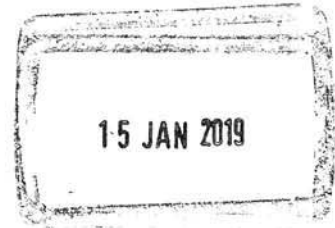
TITLE: Executive Director

DATE: _____



DEPARTMENT OF THE ARMY

SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
Phillip Burton Federal Building
Post Office Box 36023
450 Golden Gate Avenue
SAN FRANCISCO, CALIFORNIA 94102



CESPD-DE

MEMORANDUM FOR Commander, Sacramento District, ATTN: CESPK-PM-C

SUBJECT: Approval of the American River Common Features 2016 Flood Risk Management Project – Project Partnership Agreement (PPA)

1. References:

a. Memorandum, CESPK-PM-C, 21 DEC 2018, subject: American River Common Features 2016 Draft Project Partnership Agreement, as amended.

b. Memorandum, CECW-I, 03 DEC 2018, subject: American River Common Features Flood Risk Management Project- Project Partnership Agreement (PPA).

c. Memorandum, CECW-P, 29 JUN 2018, subject: Notification of Appropriations Committees Prior to Execution of Project Partnership Agreements.

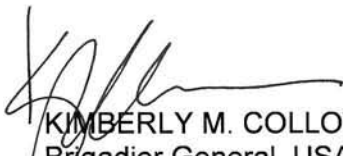
2. The District Support Team (DST) reviewed the Project Partnership Agreement (PPA) package for construction of the American River Common Features 2016. The enclosed PPA conforms to the draft PPA provided in reference 1.b. and is legally sufficient. The PPA is approved for execution and authority is hereby delegated to the Sacramento District Engineer to execute the PPA.

3. The DST will notify you once Congressional Notification is completed in accordance with Reference 1.c. The PPA is planned to be executed on or after 24 JAN 2019. Please provide the DST with an electronic copy of the executed PPA.

4. The point of contact for this action is Jessica Burton Evans, (415)503-6736, or Jessica.L.BurtonEvans@usace.army.mil.

BUILDING STRONG!

Encl


KIMBERLY M. COLLOTON
Brigadier General, USA
Commanding

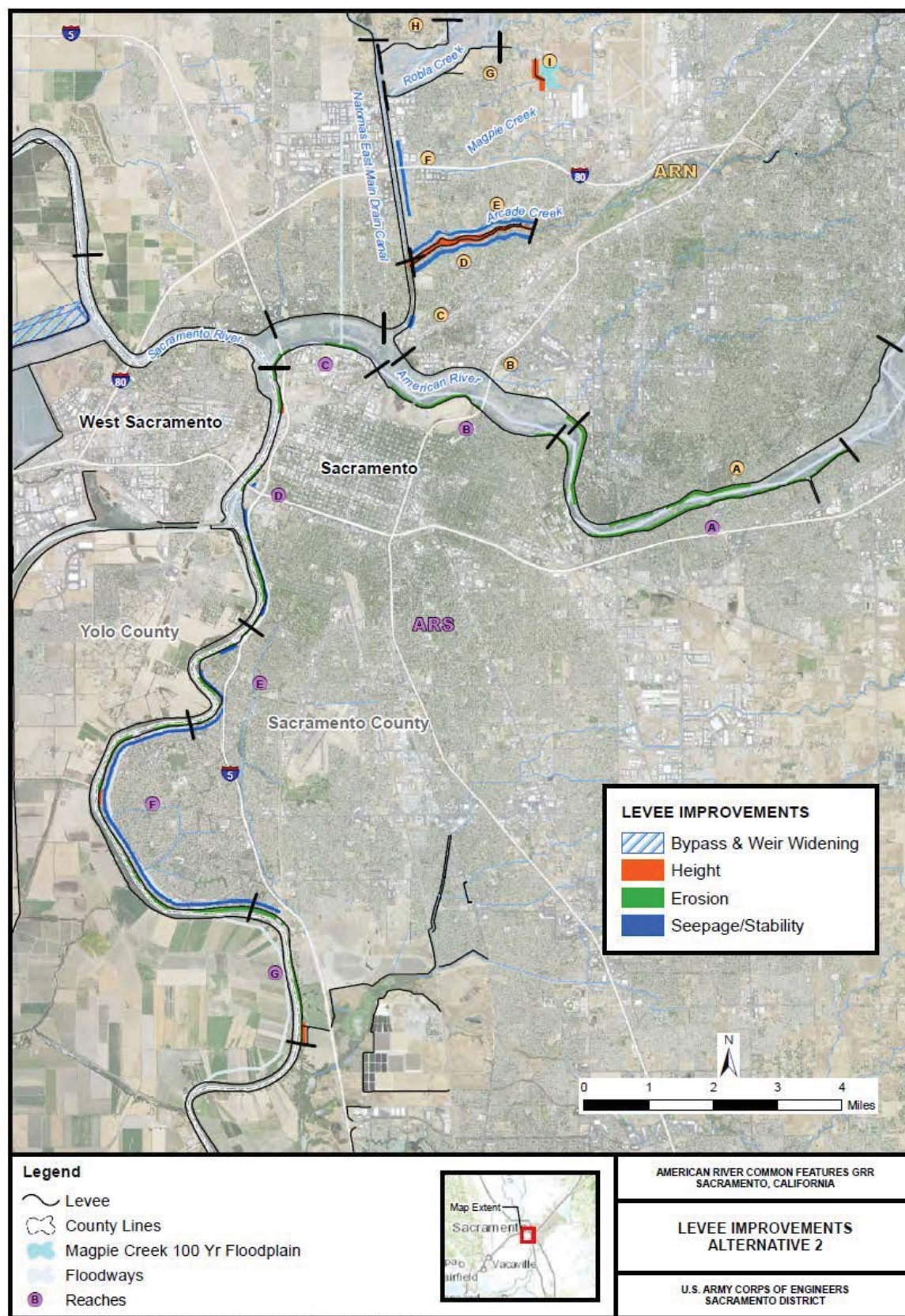


Figure 4-2: Recommended Plan Recommended Features.

**American River Common Features, WRDA 2016
Federal / Non-Federal Allocation of Funds
(\$1,000)**

Column:		Total Project Costs					Total NED Costs					Total LPP Costs									
FY	Total Project Cost (TFC) /	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		Total LERRD	Total In Kind Work	Total Non-Fed Cash	Total Fed Cash &	Total Fed Cash &	NED Total Project Cost	NED Non-Fed LERRD	NED In Kind Credit (IKC) /2/	NED Scheduled Construction/7	Percent 3/	NED Non-Fed Cash (5%) /4/	NED Adj'l Non-Fed Cash 5/	Total Fed Cash &	LPP Total Project Cost	LPP Non-Fed LERRD	LPP In Kind Work 2/	LPP Scheduled Construction/7	Percent 3/	Credit for Unconstructed NED Features/8/	LPP Non-Fed Cash
PED (Prior years)	13,000	0	10,000	1,050	1,950	1,950	3,000	0	0	3,000	0.248%	150	900	1,950	10,000	0	10,000	0	0.00%	0	0
FY19	51,583	15,342	10,000	7,741	18,500	18,500	30,000	10,000	0	20,000	1.899%	1,500	0	18,500	21,583	5,342	10,000	10,000	5.91%	3,759	6,241
FY20	493,658	113,019	197,478	24,675	158,486	158,486	368,679	81,581	110,178	176,920	14.607%	18,434	0	158,486	124,979	31,438	87,300	10,000	5.91%	3,759	6,241
FY21	332,092	23,029	4,892	75,651	228,520	228,520	264,788	23,029	0	241,759	19.960%	13,239	0	228,520	67,304	0	4,892	100,000	59.09%	37,588	62,412
FY22	742,711	116,492	10,910	112,884	502,425	502,425	733,349	116,492	10,910	605,947	50.027%	36,667	66,855	502,425	9,362	0	0	15,000	8.86%	5,638	9,362
FY23	101,813	10,764	0	30,956	60,093	60,093	92,482	10,764	0	81,688	6.744%	4,623	16,972	60,093	9,362	0	0	15,000	8.86%	5,638	9,362
FY24	94,956	23,206	0	17,162	54,589	54,589	83,883	23,206	0	60,777	50.18%	4,199	1,989	54,589	10,973	0	0	17,582	10.39%	6,609	10,973
FY25	2,344	0	0	881	1,463	1,463	2,250	0	0	2,250	0.186%	113	675	1,463	94	0	0	150	0.09%	56	94
FY26	2,344	0	0	881	1,463	1,463	2,250	0	0	2,250	0.186%	113	675	1,463	94	0	0	150	0.09%	56	94
FY27	2,344	0	0	881	1,463	1,463	2,250	0	0	2,250	0.186%	113	675	1,463	94	0	0	150	0.09%	56	94
FY28	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY29	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY30	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY31	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY32	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY33	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY34	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
FY35	1,894	0	0	724	1,170	1,170	1,800	0	0	1,800	0.149%	90	540	1,170	94	0	0	150	0.09%	56	94
Total	1,851,993	301,851	233,280	278,552	1,038,310	1,038,310	1,897,400	265,071	121,088	1,211,241	100%	79,870	93,061	1,035,310	254,593	36,780	112,192	169,332	100%	63,611	105,621

Check -	1,851,993	301,851	1,597,400	265,071	121,088	1,211,241	79,870	93,061	1,038,310	254,593	36,780	112,192	169,232	63,611	105,621
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Notes	Based on 3 Dec 2015 Cost Estimate	=65% of NED	=Planned Construction not including LERRD/IK	=FY schedul const/total LERRD/IK	=35% of NED-5% cash-5% of NED const/total LERRD/IK	Based on 3 Dec 2015 Cost Estimate	Based on current estimates & 221 MOI's	Fixed Amount for the dedicated NED Leave Work
=Total Non Fed + total Fed								

1/	TPC = estimated Total Project Cost : LPP Increment is \$254,593,000
2/	As of December 20
3/	This % is based on the proportion of scheduled construction cost to total NED or LPP construction cost
4/	TPC = Total Project Cost = \$1,000,000,000
5/	Non-Fed Cash = additional cash for each year to meet 5% cash requirement of Section 103 of WRDA '86 up to the NED total of \$1,597,400
6/	Fed Cash = Scheduled construction - Total NIS cash
7/	\$3,699,275.53 (G funds received towards design in PED and FY19.
	Fiscal Total of \$65,611,000 from unconstrained NED Leases distributed each year based on scheduled construction

Exhibit D

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.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

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

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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

Exhibit F

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.

AMERICAN RIVER WATERSHED COMMON FEATURES WRDA 2016							
Features	Non-Federal Construction Cost Share		OMRR&R			Non-Federal Credits	
	State	SAFCA	State	SAFCA	Others*	State	SAFCA
Erosion							
Lower American River Sacramento River Upstream of MA-9 Within MA-9	70%	30%		100%			
	70%	30%		100%			
	70%	30%	100%				
Levee Improvements							
North Area							
Constructed by SAFCA Under UFRR	70%	30%		100%		70%	30%
Constructed by USACE Sacramento River	70%	30%		100%			
Designed by SAFCA Under UFRR Upstream of MA-9 Within MA-9	70%	30%		100%		70%	30%
	70%	30%	100%				
Sacramento Weir and Bypass							
Sacramento Weir	70%	30%		100%			
Sacramento Bypass North Levee Setback							
Constructed by State under LEBLS Mitigation for LEBLS	100%		100%		100%	100%	
Constructed By USACE	100%		100%		100%	100%	
Bryte Landfill Remediation & Relocation	70%	30%		100%		100%	
	100%						

- OMRR&R to be the responsibility of Lower Elkhorn Basin Reclamation Districts per LEBLS

UFRR = Urban Flood Risk Reduction Program

LEBLS – Lower Elkhorn Basin Levee Setback Project

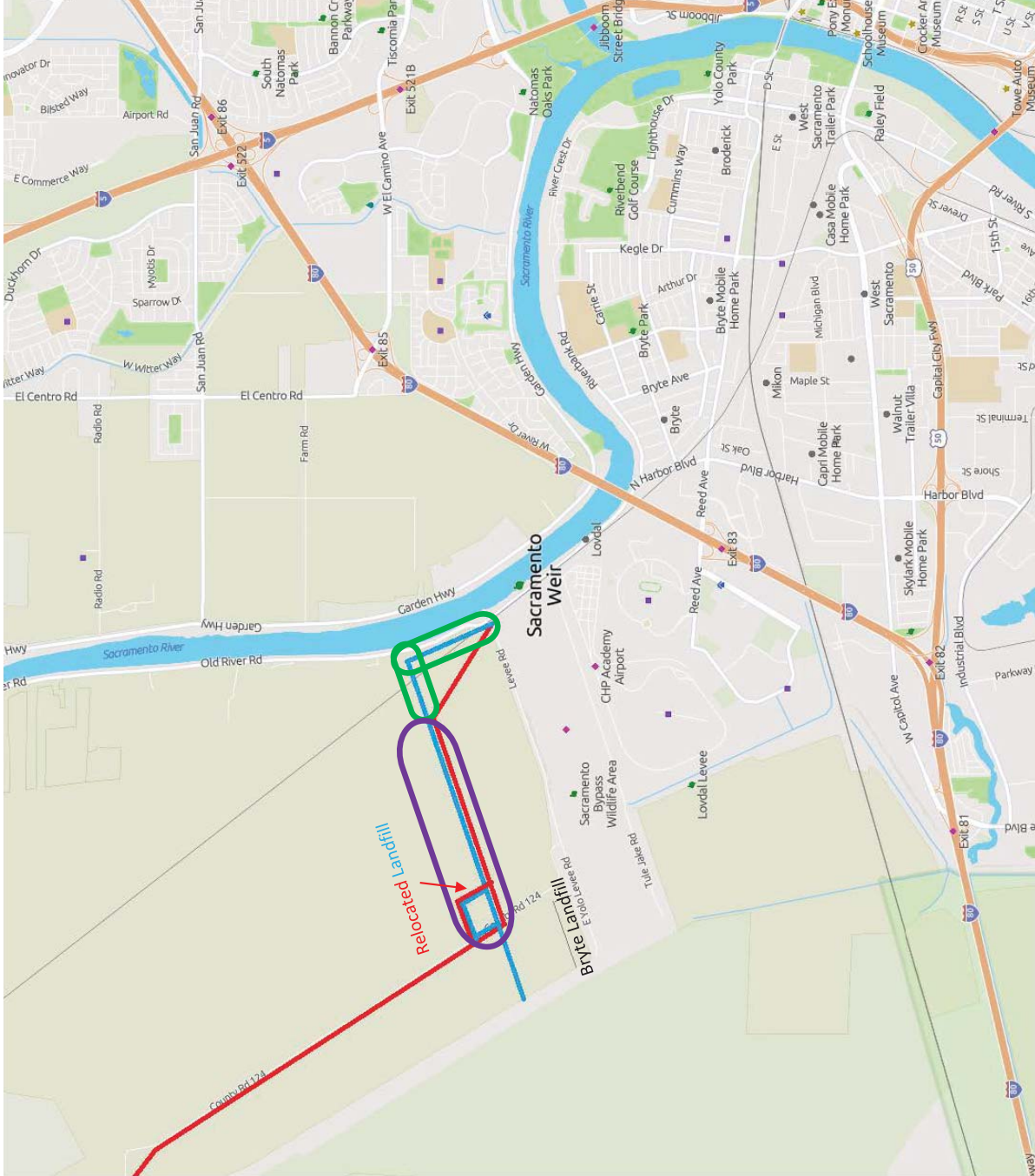
Exhibit H

Blue = Federal American River Watershed Common Features
WRDA 2016 Sacramento Weir and Bypass Features

Red = State Lower Elkhorn Levee Setback Levee Project Features

Green = Non-Federal Construction Cost Share
70% State
30% SAFCA

Purple = Non-Federal Construction Cost Share
100% State



**LOCAL PROJECT PARTNERSHIP AGREEMENT
BETWEEN THE STATE OF CALIFORNIA, CENTRAL
VALLEY FLOOD PROTECTION BOARD
AND
THE SACRAMENTO AREA FLOOD CONTROL
AGENCY
FOR CONSTRUCTION OF THE
AMERICAN RIVER COMMON FEATURES (WRDA 2016) 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 "SAFCA," on the ____ day of _____, 2019 in view of the following circumstances:

WHEREAS, construction of the American River Common Features, WRDA 2016 Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by Section 401(2)7 of the Water Resources Development Act of 2016, Pub. L. No. 114-322;

WHEREAS, Water Code Sections 8617, 12657 and 12670.14 authorize the State of California (hereinafter the "State") acting through the Board, to cooperate on the Project, and authorize the Board to give satisfactory assurances to the United States Department of the Army (hereinafter 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 intends to serve as the nonfederal sponsor of the Project on the condition that 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 the Board, SAFCA, and the Government. A draft of the PPA is attached as Exhibit A and incorporated by this reference;

WHEREAS, the Project is within SAFCA's geographical jurisdiction except for the facilities and related features located within Yolo County;

WHEREAS, the State of California, Department of Water Resources ("DWR") has commenced design of portions of the Project and intends to enter into a Section 221 Memorandum of Agreement with the Government;

WHEREAS, SAFCA has commenced design and construction of portions of the Project pursuant to Memoranda of Agreement with the Government dated August 14, 2015 and June 15, 2018 (hereinafter collectively referred to as "MOA");

WHEREAS, the Board and SAFCA (within its area of jurisdiction) have the power and authority to do all things required of the nonfederal participants for the Project;

NOW, THEREFORE, IT IS HEREBY AGREED:

SECTION I: Definitions

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

SECTION II: Obligations of the Board and 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 12670.12, 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 99-662; the nonfederal planning, engineering and construction costs required by Section 105(b) and the nonfederal design costs required by Section 105(c) of PL 99-662, and as may be reduced by credits afforded by the Government for Section 221 work as set forth in the PPA.
- D. As authorized by Water Code Section 12670.12, the Board shall pay 100 percent of the following Project construction costs allocable to any facilities and related features located in Yolo County, including but not limited to, portions of the north levee of the Sacramento Bypass which DWR will construct pursuant to its Lower Elkhorn Basin Levee Setback Project (hereinafter referred to as "LEBLSP"), the associated pump stations and related interior drainage features, the associated mitigation features and costs, and the remediation and relocation of the former Bryte Landfill (as set forth in the Funding Agreement between the California Department of Water Resources and SAFCA dated February 24, 2017 as

amended), in accordance with the terms and conditions set forth in the PPA: the nonfederal capital costs required by Section 103(a) of Public Law 99-662; the nonfederal planning, engineering and construction costs required by Section 105(b) and the nonfederal design costs required by Section 105(c) of PL 99-662, and as may be reduced by credits afforded by the Government for Section 221 work as set forth in the PPA.

- E. The cost share percentages for the construction costs, operation, maintenance, repair, replacement, and rehabilitation costs, and credit to be afforded the parties for the Project shall be as set forth in Exhibits G and H, attached hereto and incorporated herein by this reference.
- F. 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.
- G. The Board shall operate, maintain, repair, replace, and rehabilitate, or cause to be operated, maintained, repaired, replaced, and rehabilitated, by its own forces or pursuant to contract, the Sacramento Weir, and the Project facilities and related features constructed within the jurisdiction of the California Maintenance Area No. 9, at no cost to SAFCA in accordance with the regulations or directions prescribed by the Secretary of the Army and the Board;
- H. The Board shall pay the entire cost of betterments requested solely by the Board. Plans and specifications for betterments may be prepared by Board and approved by SAFCA. Upon such approval, the Board may request the Government to accomplish betterments in accordance with Article II.N. of the PPA. 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 such betterments and will provide the Government 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.
- I. SAFCA shall:
 - 1. Pay 30 percent of the following Project costs located within its area of jurisdiction, the Sacramento Weir, and the portions of the Sacramento Bypass not constructed by the State pursuant to its LEBLSP; the nonfederal capital costs required by Section 103(a) of PL 99-662; and as may be reduced by credits afforded by the Government for Section 104 work as set forth in the PPA. 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, in proportion to the amount paid by the Board and SAFCA to the Government, shall be returned by the Board to SAFCA;

2. Operate, maintain, repair, replace, and rehabilitate, or cause to be operated, maintained, repaired, replaced and rehabilitated, by its own forces or pursuant to contract, the facilities and related features constructed pursuant to the Project, except for those facilities and related features to be operated, maintained, repaired, replaced, and rehabilitated by the Board pursuant to Section II.G. above and the north levees constructed pursuant to the LEBLSP which shall be operated, maintained, repaired, replaced, and rehabilitated by the applicable reclamation districts, at no cost to the State in accordance with the regulations or directions prescribed by the Secretary of the Army and the Board;
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, except for claims and damages due to the fault or negligence of the Government or its contractors without exception;
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 arising out of or in connection with the obligations herein assumed by SAFCA, 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, except for claims or damages due to the fault or negligence of the Government or its contractors or the State, Board or its contractors. 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 solely by SAFCA. Plans and specifications for betterments may be prepared by SAFCA and approved by the Board. Upon such approval, SAFCA 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 II of this Agreement. SAFCA will establish a cost accounting system that will separately identify and document all costs attributable to such betterments and will provide the Government 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.

- J. To the extent of its powers, SAFCA agrees to participate in and comply with applicable federal floodplain management and flood insurance programs.
- K. In order to facilitate nonfederal participation in the Project, the Board and SAFCA agree that the following actions and/or decisions shall be made only upon mutual consent of both the Board and SAFCA :
 - 1. The decision as to the maximum cumulative financial obligation for construction of the Project;
 - 2. 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
 - 3. The appointment of representatives to the Project Coordination Team (PPA Article II.M.)
- L. The development and implementation of a betterment that is required to meet the Board's Urban Level of Flood Protection shall be cost shared as between the Board and SAFCA as if it were a necessary Project component.

SECTION III: Acquisition of Project Rights of Way

- A. Subject to the limitations of Paragraph III.K. of this Agreement, 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 or within the Project's geographic limits ("Project rights of way"). If SAFCA or its contractors provide 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, in compliance to State Standards."
 - 2. Preparation of deeds and contracts for all parcels, in compliance to State Standards.
 - 3. Appraisal of all parcels, in compliance to State Standards.
 - 4. Examination of title to all parcels, including the obtaining of litigation

guarantees and/or preliminary reports on title and final 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(s).
 7. Providing relocation assistance for qualified occupants of acquired property, as required by State and federal statutes, rules, and regulations.
 8. Phase I and Phase 2 Environmental Site Assessment Reports to determine the existence and potential presence of hazardous and toxic waste materials.
- B. Board staff shall provide SAFCA with appraisal guidelines, appraisal format, geodetic guidelines and standards, sample copies of right-of-way contracts and deed language to be used for acquisition activities. All such activities shall conform to the State's established procedures for land acquisition.
- C. Record Title to all parcels acquired for the Project's operation and maintenance purposes, other than mitigation lands, that are not vested in the Federal Government will be ultimately be vested in the Sacramento and San Joaquin Drainage District. The Board shall ensure that SAFCA is able to maintain the portions of the Project within its area of jurisdiction not maintained by Maintenance Area No. 9 by its own forces or pursuant to contract, by, as needed, either granting an easement for operation and maintenance to SAFCA or entering into a joint-use agreement with SAFCA. Any such agreement shall be executed no later than six months after all required real property interests for the Project have been acquired.
- D. If SAFCA or its contractors provide Project rights of way, SAFCA acknowledges that pursuant to Article III of the PPA, the Board and SAFCA are obligated to certify to the Government that Project rights of way have been acquired. The date by which certification will be required will be set by the Government after the PPA and this Agreement have been executed. SAFCA 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 Board 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.

- E. The actual reasonable costs of Project rights of way incurred by SAFCA and its contractors, and their reasonable costs of performance, as defined in this paragraph, shall be eligible for credit toward SAFCA's portion of the nonfederal share of total Project costs. The method of calculating that credit is set forth in Section IV of this Agreement. For purposes of this Agreement, the term "costs of performance" shall include: fees and expenses payable to SAFCA'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.
- F. SAFCA shall (1) keep Board staff apprised of its right-of-way acquisition activities and the activities of its contractors, (2) consult with Board 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. SAFCA shall provide to Board 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 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, SAFCA shall provide to 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 SAFCA reasonably promptly following receipt of those documents, and in no event later than 60 days following receipt. If no results are reported within 60 days, SAFCA may proceed to make a written offer, which offer shall be deemed approved by Board staff. Before the close of escrow for any parcel, SAFCA shall provide to Board staff the memorandum of settlement and either a litigation guarantee or a preliminary title report. The Department of General Services will review and approve each individual acquisition before the close of escrow, except as provided in Department of General Services' Exemption No. 34.3, dated October 1, 1991, and any revisions thereto.
- 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 V. of the PPA, the Board will provide 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 State's share of required 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 real property 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. Any costs associated with the purchase of land, easement, rights of way, and relocations in excess of the minimum required acreage required by the Government shall not be eligible for reimbursement by the State unless the State is afforded credit or reimbursed by 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 SAFCA, its officers, agents, and employees under or in connection with any work, authority, or jurisdiction delegated to SAFCA under this Section.

SECTION IV: Method of Payment

- A. The following table is appended hereto as Exhibit C and made a part of this Agreement by this reference: Allocation Table for American River Common Features (WRDA 2016) Project.
- B. The Board and 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 C 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 XII 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

Article VI "Method of Payment" of the PPA, and in accordance with Exhibit D, 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, the Board will attempt to maintain, subject to a final accounting, the 70 /30 percent (Board/SAFCA) cost-sharing ratio and 100 percent (DWR) cost-share of expenditures that is required by Sections II.C, II.D., and II.I.I and Exhibits G and H of this Agreement, in the following manner:

1. Cash Payments to the Corps of Engineers - The Board will forward to the Corps of Engineers the cash payments for the nonfederal share of costs of construction contracts as required by Article VI "Method of Payment" of the PPA, and in accordance with Exhibit D. Upon written request by the Board, SAFCA will pay the Board 30 percent of the nonfederal share of costs for its portion of the payment on the same schedule as the Board is required to make payments to the Corps. SAFCA shall provide its share of construction costs within 30 days after receipt of payment notice. SAFCA is to inform the Board if it cannot pay its share of costs and provide Board with a schedule of when it is able to do so no more than 120 days after receipt of the payment notice.
2. Project Costs incurred by SAFCA – 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 The Central Valley Flood Protection Board addressed as follows:

Executive Officer
The Central Valley Flood
Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, California 95821-9000

If SAFCA becomes an acquiring agency for Project rights of way, then the Board will pay SAFCA 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 V of the PPA. Any costs associated with the purchase of land, easement, rights of way, and relocations in excess of the minimum required acreage required by the Government shall not be eligible for reimbursement by the State unless the State is afforded credit or reimbursed by the Government.

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 reach of the Project as determined to be eligible for credit under Project requirements in accordance with the provisions of Article V of the PPA. SAFCA shall provide its cost share within 30 days after receipt of payment notice. SAFCA is to inform the Board if it cannot pay its share of costs and provide Board with a schedule of when it is able to do so, no more than 120 days after receipt of the payment notice.

- 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.
- G. The estimated nonfederal cash contribution by federal fiscal year is shown on the table in Exhibit C. 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. 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 XII. of the PPA.

SECTION V: Credit

- A. Any credit afforded by the Government for work-in-kind pursuant to MOAs or other agreements, shall be prorated to either the Board or SAFCA, whichever entity performed the work for which the credit is afforded in the cost share percentages set forth in the MOAs or other agreement. Notwithstanding the foregoing, if SAFCA receives reimbursement from the Board for work to which credit can be afforded by Government, the board shall be afforded the credit. Exhibit G and H set forth the portions of the Project

and the applicable cost share of credit for which the Board and SAFCA may be afforded credit by the Government.

SECTION VI: Cultural and Tribal Resources

- A. SAFCA has entered into Memorandum of Agreement ("Tribe MOA") with culturally affiliated tribes for the geographic region in which the Project will be implemented setting forth SAFCA's responsibilities, obligations, and liabilities in addition and pursuant to federal and state law, including but not limited to the National Environmental Policy Act (42 USC §§4321-4347 and 40 CFR 1500-1508); the California Environmental Quality Act (Cal. Public Resources Code Section 21000 et seq. and California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15000 et seq.); and Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 et seq.). The parties agree that any of SAFCA's responsibilities, obligations, and liabilities as set forth in a Tribe MOA which are in excess of what is legally required by federal or state law shall be solely the responsibility, obligation, and liability of SAFCA.

SECTION VII: Operation and Maintenance of the Environmental Mitigation Site

- A. Compensation for all significant adverse environmental habitat impacts resulting from Project construction may be performed by establishing one or more environmental mitigation sites. In the event a mitigation site is required, it will be considered to be a functional unit of the Project. The Government's contractor shall construct the mitigation site as directed by the Government to meet the mitigation requirements approved for the Project by the Board and SAFCA and the Government. In that event, the Government's contractor shall perform maintenance, which includes irrigation, weed control, and plant replacement, for the three-year plant establishment period prior to acceptance of the work by the Government. When the three-year period has elapsed, the Government shall turn the mitigation site over to the Board for maintenance, if the site has been established.
- B. In the event that a mitigation site is required and after satisfactory completion of the three year establishment period by the Government's Contractor and acceptance by the Government, SAFCA will perform or cause to be performed the post establishment operation, maintenance, repair, replacement, and rehabilitation of the mitigation site and will bear the entire cost of these obligations, except for those facilities and related features located within the LEBLSP not included in the WRDA 2016 Project, which shall be operated, maintained, repaired, replaced, and rehabilitated by the Board pursuant to Section II.G. and Exhibits G and H. The specific work necessary to operate, maintain, repair, replace, and rehabilitate the mitigation site will be specified by the Board in accordance with the permits and other regulatory approvals issued for the Project.

SECTION VIII: Disputes

- A. 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.

SECTIONIX: Maintenance of Records; Audit

- A. 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 right of way acquisition 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 X: Final Accounting

- A. 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 XI: Compliance with State and Federal Law

- A. In carrying out the provisions of this Agreement, the Board and SAFCA agree 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, the Board and 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 a applicable benefits, policies, and procedures in connection with said Acts.

SECTION XII: 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.
- B. SAFCA intends to satisfy its obligations under this Agreement. SAFCA shall include in its budget requests or otherwise propose funding 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. SAFCA 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, SAFCA 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 SAFCA is unable to satisfy its obligations hereunder, the State may exercise any legal rights it has to protect the State's interests related to this Agreement.
- C. In the event that the State is unable to secure the appropriations for any year sufficient to make the payments necessary to fulfill the State's obligations hereunder, SAFCA shall use its best efforts to satisfy any requirements for payments that are the obligation of the State under this Agreement from any source of funds legally available for this purpose until such time as State funding is appropriated. Funds so advanced by SAFCA shall be reimbursed by the State or reflected in future cost share payment requests.
- D. Upon SAFCA's request, the State may advance fund all, or a portion of, the remaining State share of the total project cost beyond the amount currently requested by the Government, with funds encumbered in an executed cost share agreement between the State and SAFCA intended to fund work covered under WRDA 2016.

SECTION XIII: Hazardous Substances

Pursuant to Article XIII of the PPA, the Board and SAFCA may incur certain obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601-9675, on lands necessary for Project construction. SAFCA agrees that:

- A. In the event that the Government pursuant to Article XIII of the PPA, determines that it will initiate or continue with construction of the Project at any site necessary for Project construction, operation, or maintenance at which hazardous substances regulated under CERCLA have been found, then, at the direction of the Board staff and after consultation with SAFCA, SAFCA shall initiate and complete any and all necessary response and cleanup activity required under CERCLA, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA shall be made by SAFCA. In the event that SAFCA fails to provide the funds necessary for response and cleanup activity required under CERCLA or to otherwise discharge SAFCA's responsibilities under this paragraph C, but the Government determines that it will proceed with work at the site, then the Board may perform the necessary response and cleanup activity, and SAFCA will reimburse the Board for its costs. If the Board performs the necessary response and cleanup activity required under CERCLA, the Board shall consult with SAFCA concerning the selection of the person(s) or entity to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity, prior to commencement of any necessary response and cleanup activity.
- B. The Board and SAFCA shall consult with the Government in accordance with Article XIII of the PPA, in order to ensure that responsible persons under CERCLA ultimately bear all necessary response and cleanup costs as defined in CERCLA.
- C. SAFCA shall operate, maintain, repair, replace, and rehabilitate the portions of the Project for which it is responsible pursuant to Section II.G.2. in a manner that will control the intentional or negligent release or threatened release of hazardous substances regulated under CERCLA on lands necessary for Project construction.
- D. The Board shall operate, maintain, repair, replace, and rehabilitate the portions of the Project for which it is responsible pursuant to Section II.G. and Exhibits G and H in a manner that will control the intentional or negligent release or threatened release of hazardous substances regulated under CERCLA on lands necessary for Project construction
- E. In the event that the Government or the Board are found to be liable under CERCLA for the release or threatened release of hazardous substances arising out of the construction of the Project, then SAFCA shall indemnify the Government or the Board for any response or cleanup costs for which the Government or the Board is found liable under CERCLA, except for such response or cleanup costs which result from negligence of the Government or its contractors, or Board during construction.
- F. No decision made or action taken pursuant to any provision of this Section of this Agreement shall relieve any responsible person from any liability that may arise under

CERCLA, nor shall such decision or action be considered a waiver by the Board or SAFCA of any right to seek from any responsible person as defined by CERCLA, the recovery or contribution of or indemnification from costs incurred by the Board or SAFCA for response or cleanup activity required under CERCLA, nor shall such decision or action be considered a waiver by the Board or SAFCA of any other right or remedy provided by law.

- H. As between the Board and SAFCA, SAFCA shall be considered the operator of its reach of the Project for purposes of CERCLA liability for the portions of the Project for which it is responsible pursuant to Section II.2. and Exhibits G and H and the Board shall be considered the operator of its reach of the Project for purposes of CERCLA liability for the portions of the Project for which it is responsible pursuant to Section II.G and Exhibits G and H, except during the periods when the Government operates, maintains, repairs, replaces or rehabilitates the Project. To the maximum extent practicable, SAFCA and Board shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

SECTION XIV: Term of Agreement; Amendment

- A. 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. This Agreement may be amended only upon consent of all parties and the approval of the Department of General Services. If the final PPA executed between the Government and the Board 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 XV: Notices

- A. 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 Avenue, Suite 170
Sacramento, California 95821-9000

If to SAFCA:

Executive Director
SAFCA
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 XVII: Standard Clauses

- A. The Standard Clauses attached hereto as Exhibit E, General Terms and Conditions for Department of Water Resources (Local Public Entities Receivables), are incorporated by this reference.
- B. Officials or employees 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 F, are incorporated by this reference.

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SECTION XVI: Severability

- A. 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 M. Johnson
Executive Director
Sacramento Area Flood Control Agency

_____
M. Holly Gilchrist
Agency Counsel
Sacramento Area Flood Control Agency