

LOWER SAN JOAQUIN RIVER  
FEASIBILITY STUDY

***Resolution No. 2012-13***  
***Amendment No. 2***

Board Package Documents

CVFPB Meeting: July 27, 2012

Agenda Item 7V

RESOLUTION # 2012-13

Paul Larson, PE  
Project Manager  
USACE / CVFPB Studies Section

**Meeting of the Central Valley Flood Protection Board  
July 27, 2012**

**Staff Report**

**Amendment No. 2  
to the  
Feasibility Cost Sharing Agreement  
Between the Department of the Army and the State of California and the  
San Joaquin Area Flood Control Agency  
for the  
Lower San Joaquin River Feasibility Study**

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**1.0 ITEM**

Consider approval of Resolution No. 2012-13 to:

1. Approve Amendment No. 2 to the Feasibility Cost Sharing Agreement (FCSA) between the Department of the Army, the State of California and the San Joaquin River Area Flood Control Agency for the Lower San Joaquin River Feasibility Study; and
2. Delegate to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto; and
3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

**2.0 SPONSORS**

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

**3.0 LOCATION**

The study area of the Lower San Joaquin River Feasibility Study includes the lower (northern) portion of the San Joaquin River system within the Central Valley, extending north from the City of Manteca to just south of Lodi and includes the Greater Metropolitan Stockton area.

## **4.0 PROJECT DESCRIPTION**

The goal of the Lower San Joaquin River Feasibility Study is to identify flood control and related natural resources problems within the primary study area, to formulate potential solutions to those problems, and to recommend a plan for implementation. This Study will focus on reducing flood risk to people, property and the State's infrastructure along the Lower San Joaquin River and major creeks and streams within the Study area. The goal is to not only achieve at least a 200-year level of protection for the urban areas to meet Senate Bill 5 (SB5), but also to develop a sustainable flood management system for the future and reduce the adverse consequences of floods when they do occur. The Study will also investigate ecosystem restoration and recreational opportunities.

USACE uses Feasibility Studies to present the results of investigations conducted prior to, and in support of, congressional authorization of a project. In the case of the Lower San Joaquin River Feasibility Study, the Study will determine the extent of federal interest in flood risk management and ecosystem restoration within the Lower San Joaquin River Area.

The Lower San Joaquin River Feasibility Study will produce an economically viable solution for flood protection within portions of San Joaquin County, including the greater Stockton area and surrounding communities, that represents the FloodSAFE vision, fulfills SB5 requirements, and satisfies the USACE National Economic Development (NED) plan.

## **5.0 PROJECT ANALYSIS**

### **5.1 PROJECT BACKGROUND**

The Lower San Joaquin River Feasibility Study was first brought before the Board in November 2007. At that meeting the Board approved a Letter of Intent to participate as a Non-federal Sponsor of the Study. However, due to the State budget difficulties at the time, the Board did not officially become a Sponsor of the Study until June 2010 when it approved Amendment No. 1 to the FCSA, formally agreeing to participate as a Non-federal Sponsor for the Study along with USACE and SJAFCA.

Due to the continuing budget issues at the federal level, the United States Congress is limiting and, in some cases, denying funds to USACE for Investigations (Feasibility Studies). Amendment No. 2 to the FCSA will allow the Board to accelerate contributions ahead of available matching USACE funds up to the limits allowed by the FCSA. Currently, USACE must balance their utilization of funds equally between federal funds and Non-federal contributions and cannot expend Non-federal contributions without matching available federal funds.

The intent behind this language is to provide a mechanism to keep the Study progressing on schedule should there be a delay in future Federal funding. It is our

expectation that USACE will be requesting adequate funding so this provision will be used only as a contingency to help maintain the Study schedule. The decision to provide accelerated contributions to USACE will not result in payment of any funds exceeding the current non-federal sponsors' contract amount, as specified in the FCSA. It will simply provide a mechanism by which the Board can provide contributions before USACE receives matching federal funds.

## 5.2 PREVIOUS BOARD ACTIONS

Date:	Action:
November 16, 2007	The Board, then known as The Reclamation Board, provided a letter to the USACE indicating the intent of the Board to act as a Non-federal Sponsor of the Lower San Joaquin River Feasibility Study.
July 18, 2008	The Board approved the Feasibility Cost Share Agreement (FCSA) and Local Feasibility Cost Share Agreement (LFCSA) for the Lower San Joaquin River Feasibility Study; however, due to State budgetary issues at the time the Agreement was not executed.
February 19, 2009	The Department of the Army and the San Joaquin Area Flood Control Agency entered into a Feasibility Cost Sharing Agreement to conduct the Lower San Joaquin River Feasibility Study ( <i>Note: This was not a Board Action</i> )
June 25, 2010	The Board approved and executed Amendment No. 1 to the Feasibility Cost Sharing Agreement previously executed between the Department of the Army and the San Joaquin Area Flood Control Agency on February 19, 2009, adding the State of California (Board) as a Non-federal sponsor
June 25, 2010	The Board approved a Local Feasibility Cost Sharing Agreement between the Central Valley Flood Protection Board and the San Joaquin Area Flood Control Agency for the Lower San Joaquin River Feasibility Study

### **5.3 PROJECT BENEFITS**

The primary benefits of Amendment No 2 to the FCSA are as follows:

- Provides the option to the Non-federal Sponsors to accelerate their share of funding to allow the Study to continue in the event federal funding is delayed.
- Assists in maintaining or improving upon the current Study schedule, if necessary

### **5.4 STAFF ANALYSIS**

Amendment No. 2 will give the Non-federal partners (the Board and SJAFCA) the option of accelerating contributions to USACE in an amount not to exceed the current estimate of the Board's required contribution and the limits provided in the FCSA. This acceleration of contributions to USACE will be made entirely at the discretion of the Non-federal partners if deemed necessary to maintain the project schedule, but must first be offered in writing, and accepted, by USACE.

It is our expectation that USACE will be requesting adequate funding so this provision would be used only as a contingency in order to help maintain the Study schedule and under no circumstances will it result in payment of funds exceeding the total estimate for the non-federal sponsor's current cost share requirements.

It is important that these Feasibility Studies continue progressing toward completion. Besides the obvious public safety element and the need to meet the provisions of SB5, Proposition 1E bond funds for flood control projects must be appropriated no later than July 1, 2016.

### **6.0 AUTHORIZATIONS**

Federal: Flood Control Act of 1962; House Resolution dated May 8, 1964; Conference Report 108-357 accompanying Energy and Water Appropriations Act , 2004.

State: California Water Code Sections 8615 and 12616

## **7.0 STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 2012-13 to:

1. Approve Amendment No. 2 to the Feasibility Cost Sharing Agreement between the Department of the Army and the State of California and the San Joaquin River Area Flood Control Agency for the Lower San Joaquin River Feasibility Study; and
2. Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment No. 2 in substantially the form attached hereto; and
3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

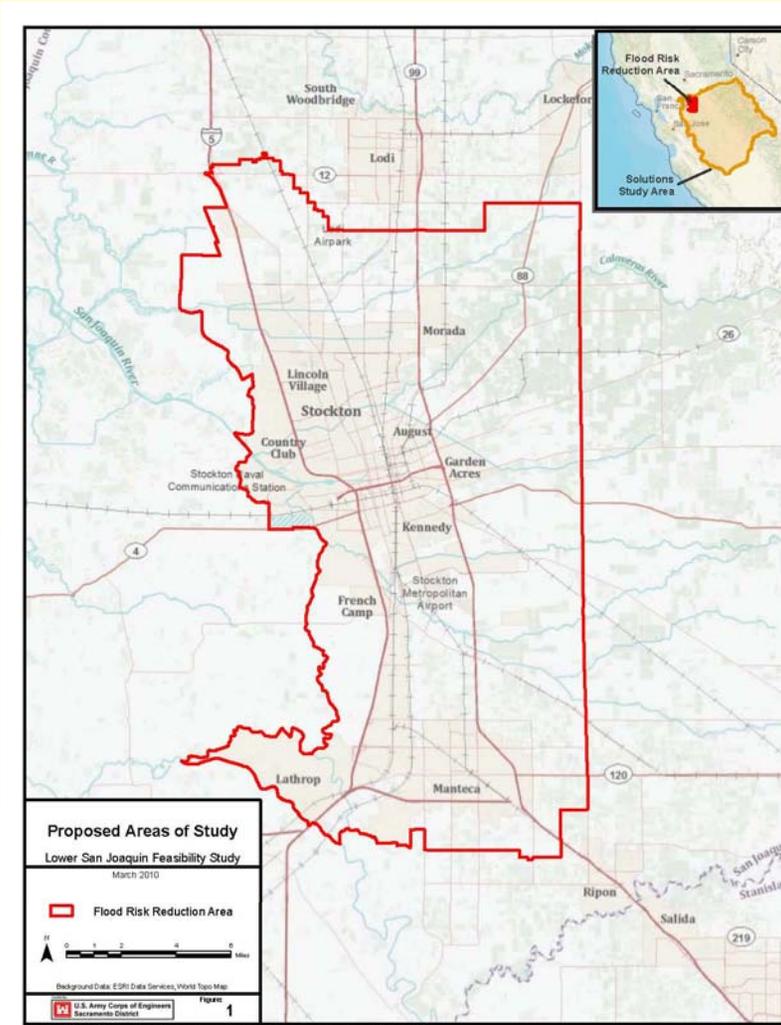
## **8.0 ATTACHMENTS**

- A. Location Map – Study Area
- B. Resolution 2012-13
- C. Amendment No. 2 to the FCSA (Agreement)
- D. PowerPoint Presentation
- E. Amendment No. 1 to the FCSA
- F. Feasibility Cost Sharing Agreement (FCSA)
- G. Local Feasibility Cost Sharing Agreement (LFCSA)





# Study Area





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

RESOLUTION NUMBER: 2012-13

AMENDMENT NO. 2  
TO THE  
FEASIBILITY COST SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA  
AND  
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
FOR THE  
LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

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

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

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

WHEREAS, the Department of the Army and the San Joaquin Area Flood Control Agency entered into a Feasibility Cost Sharing Agreement on February 19, 2009 to conduct the Lower San Joaquin River Feasibility Study; and

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

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541, amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. Section 2215(a)(1)(e)) to allow the local sponsors to provide their entire share of the study costs through the provisions of in-kind services; and

WHEREAS, the principal purpose of this Amendment is to provide a mechanism to allow the Central Valley Flood Protection Board and the San Joaquin Area Flood Control Agency to offer to accelerate payment of Non-federal funds to the U.S. Army Corps of Engineers in an amount not to exceed the current estimate of the non-federal sponsors' required cost share, less any funds or in kind contribution previously contributed, for immediate use by the U.S. Army Corps of Engineers in order to maintain the Study schedule.

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

1. Approves Amendment No. 2 to the Feasibility Cost Sharing Agreement between the Department of the Army, the State of California, and the San Joaquin Area Flood Control Agency for the Lower San Joaquin River Feasibility Study; and
2. Delegates to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto; and
3. Delegates to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

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

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

BY: \_\_\_\_\_  
Jane Dolan  
Board Secretary

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

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
Jeremy Goldberg  
Staff Counsel



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

Attachment C  
Resolution 2012-13

JUN 25 2012

CEMP-SPD

MEMORANDUM THRU COMMANDER, SOUTH PACIFIC DIVISION (SPD-DE)

FOR COMMANDER, SACRAMENTO DISTRICT (SPK-DE)

SUBJECT: Feasibility Cost Share Agreement Amendment 2 between the Department of the Army and the state of California and the San Joaquin Area Flood Control Agency for the Lower San Joaquin River Feasibility Study

1. Reference: CECW-PC, memorandum dated 15 June 2007, Subject: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study.
2. The subject feasibility cost sharing agreement (FCSA) Amendment 2 is approved. A copy of the approved agreement is enclosed. Signature authority is delegated to the Sacramento District Commander.
3. You must ensure that the FCSA Amendment 2 is signed by the sponsors as approved, without deviation, not later than 21 calendar days after the date of this memorandum. The Sacramento District should prepare a minimum of four final FCSA Amendment 2 originals. Upon execution, the district will retain two copies of the executed FCSA Amendment 2. The remaining copies of the executed FCSA Amendment 2 should be provided to the sponsors. A pdf copy of the executed FCSA Amendment 2 should be forwarded to CEMP-SPD (Cindy Tejada) not later than 14 days after signature of the FCSA Amendment 2 by the District Commander.
4. If any deviations to the approved FCSA Amendment 2 are required, prior to signature by the sponsors, the district will transmit a memorandum notifying CEMP-SPD of the reasons for the deviations and requesting approval of the deviations. Only after receipt of written approval from CEMP-SPD, will the deviations be incorporated into the approved FCSA Amendment 2.
5. If the 21 day suspense will not be met, the district will transmit a memorandum notifying CEMP-SPD of the reasons for the slip or identifying changed conditions and the recommended course of action.
6. Any questions should be directed to Ms. Cindy Tejada, 202-761-0344.

FOR THE COMMANDER:

Encl

STEVEN L. STOCKTON, P.E.  
Director of Civil Works

AMENDMENT NUMBER 2  
TO THE  
FEASIBILITY COST SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA  
AND  
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
FOR THE  
LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

THIS AMENDMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency (hereinafter "SJAFCA"), represented by its Executive Director (hereinafter referred to collectively as the "Non-Federal Sponsors").

WITNESSTH, THAT:

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

WHEREAS, the Government, SJAFCA, and the State entered into Amendment 1 to the Agreement on June 25, 2010, for the purpose of adding the State as a Non-Federal Sponsor;

WHEREAS, the Non-Federal Sponsors may offer, in writing, to accelerate their provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsors' required contribution for the Study, less any funds previously contributed, for the immediate use by the Government for the Study;

WHEREAS, the parties agree that such acceptance shall not represent or give rise to an obligation of the United States, including any obligation to provide reimbursement of the funds the Non-Federal Sponsors elect to provide or any obligation to request future funds to match the amount the Non-Federal Sponsors elect to provide, and that such funds will be credited against the Non-Federal Sponsors' future cost share only if additional Federal funds are appropriated; and

WHEREAS, should the Non-Federal Sponsors elect not to accelerate funds, the Non-Federal Sponsors may still provide up to 100 percent of their required contribution for the Study as non-Federal in-kind contributions.

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

1. ARTICLE I – DEFINITIONS is amended as follows:

a. Paragraph B., second sentence is amended by deleting “the Government’s costs of external peer review, if required;” and replacing it with “the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel;”.

b. Paragraph B, third sentence is amended by inserting “the costs of any contract for an Independent External Peer Review Panel for the *Study* pursuant to Section 2034 of the Water Resources Development Act of 2007 (33 U.S.C. 2343);” after “the Non-Federal Sponsor’s costs of negotiating this Agreement;” and before “or any costs of negotiating a design agreement”.

2. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS is amended by inserting the following additional paragraphs at the end thereof:

“K. The Non-Federal Sponsors may offer in writing to accelerate provision to the Government of all or a portion of their contribution of funds required by paragraph C.1 of this Article for immediate use by the Government for the *Study*. Any such offer shall be in writing and shall identify the amount of funds that the Non-Federal Sponsors are proposing for accelerated provision and use. Upon receipt of any such offer from the Non-Federal Sponsors, the Government shall evaluate the potential of using accelerated funds for work on the *Study*. If in its sole discretion the Government elects to accept such offer, the Government shall notify the Non-Federal Sponsors in writing of such acceptance. Upon receipt of such accelerated funds, the Government shall use such funds for the *Study*. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the Non-Federal Sponsors’ contribution of funds required by paragraph C.1 of this Article minus any funds previously contributed by the Non-Federal Sponsors as of the date the Government accepts the offered funds.

L. As Federal appropriations are made available to pay the Federal share of *total study costs*, the Government shall afford credit for the funds provided in accordance with paragraph K. of this Article toward the Non-Federal Sponsors’ contribution of funds required by paragraph C.1. of this Article.

M. The Non-Federal Sponsors understand that neither execution of this Agreement nor acceptance of the accelerated funds constitutes, represents, or implies any commitment to budget or appropriate funds for this *Study* in the future or to match the amount of accelerated funds that the Non-Federal Sponsors elect to provide. Credit for these funds toward the Non-Federal Sponsors’ contribution of funds required by paragraph C.1. of this Article shall be provided only to the extent that additional Federal funds are appropriated for this *Study*, and the Non-Federal Sponsors understand that they shall not be entitled to any repayment of these funds even if the *Study* is not completed. Nothing herein shall represent, or give rise to, obligations of the United States.”

3. ARTICLE IV – METHOD OF PAYMENT is amended as follows:

a. Paragraph A.2. is amended by inserting “the credit afforded pursuant to Article II.L. of this Agreement;” after “the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement;” and before “and the *non-Federal proportionate share*.”

b. Paragraph B.2.a. is amended by inserting “after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement,” after “required from the Non-Federal Sponsors” and before “to meet.”

c. Paragraph B.2.b. is amended by inserting “after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement,” after “required from the Non-Federal Sponsors” and before “to meet.”

d. Paragraph B.3., first sentence, is amended by deleting “and” before “(b)” and by inserting the following at the end of the sentence:

“; and (c) to the extent funds are offered and accepted in accordance with Article II.K of this Agreement, any other *financial obligations to be shared during the period of the study* in excess of the *non-Federal proportionate share of financial obligations to be shared during the period of study* as they are incurred during the *period of study*.”

e. Paragraph B.3., second sentence, is amended by inserting “after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement,” after “the Government determines” and before “that additional funds will be needed” in the second sentence.

f. Paragraph C.2. is amended by inserting the following at the end thereof:

“However, if the final accounting is conducted prior to the end of the *period of study* due to termination of the Agreement pursuant to Article IX of this Agreement, and the Non-Federal Sponsors accelerated provision of all or a portion of their required contribution of funds in accordance with Article II.K. of this Agreement, the Government shall refund to the Non-Federal Sponsors only that portion of any such accelerated funds that were not obligated by the Government for work on the *Study*, subject to the availability of funds.”

4. All other terms and conditions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 2 to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

BY: \_\_\_\_\_  
William J. Leady  
Colonel, Corps of Engineers  
District Engineer

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

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

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

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

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

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

CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of the Central Valley Flood Protection Board ("Board") for this project, acting on behalf of the State of California, that the Board is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 2 to the Agreement Between The Department of The Army, The State of California and the Board in connection with the Lower San Joaquin River Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment Number 2 to the Agreement, and that the persons who have executed this Amendment Number 2 on behalf of the State of California, acting by and through the Central Valley Flood Protection Board, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Jeremy Goldberg  
Legal Counsel  
Central Valley Flood Protection Board

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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

William H. Edgar, President

Central Valley Flood Protection Board

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

CERTIFICATE OF AUTHORITY

I, Scott Shapiro, do hereby certify that I am the principal legal officer of the San Joaquin Area Flood Control Agency, that the San Joaquin Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 2 to the Agreement Between The Department of The Army, The State of California and the San Joaquin Area Flood Control Agency in connection with the Lower San Joaquin River Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment Number 2 to the Agreement, and that the persons who have executed this Amendment Number 2 on behalf of the San Joaquin Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

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

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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

James B. Giottonini

San Joaquin Area Flood Control Agency

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





# Lower San Joaquin River Feasibility Study

## Federal Cost Sharing Agreement Amendment No. 2

Agenda Item 7V: Resolution 2012-13  
July 27, 2012

Paul R. Larson, PE  
Project Manager  
USACE / CVFPB  
Studies Section



# Amendment #2

## Acceleration of Non-federal Funding:

- Provides the option to the Non-federal Sponsors to accelerate their share of funding to allow the Study to continue in the event federal funding is delayed.
- Permits USACE to utilize Non-federal Sponsor's funds in advance of matching federal funds
- Assists in maintaining or improving upon the current Study schedule, if necessary
- Does not increase the current total Non-federal sponsor's funding commitment



# Requested Board Action

## Consider approval of Resolution No. 2012-13 to:

1. Approve Amendment No. 2 to the Feasibility Cost Sharing Agreement between the Department of the Army, the State of California and the San Joaquin Area Flood Control Agency for the Lower San Joaquin River Feasibility Study; and
2. Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto; and
3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.



# Study Sponsors



**US Army Corps  
of Engineers®**

United States Army Corps of Engineers  
Sacramento District (USACE)



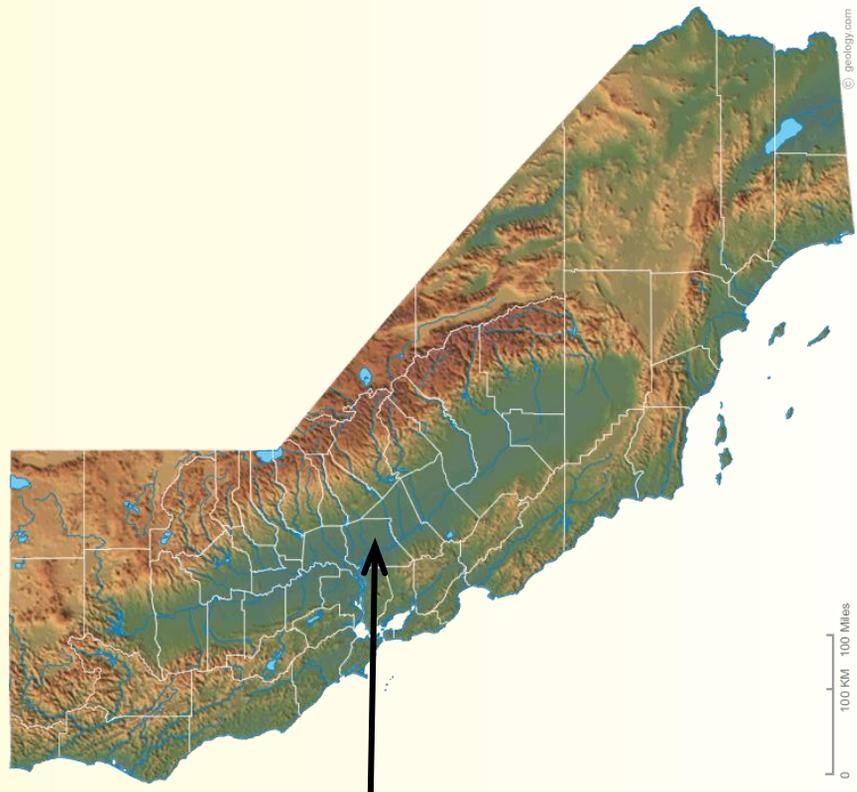
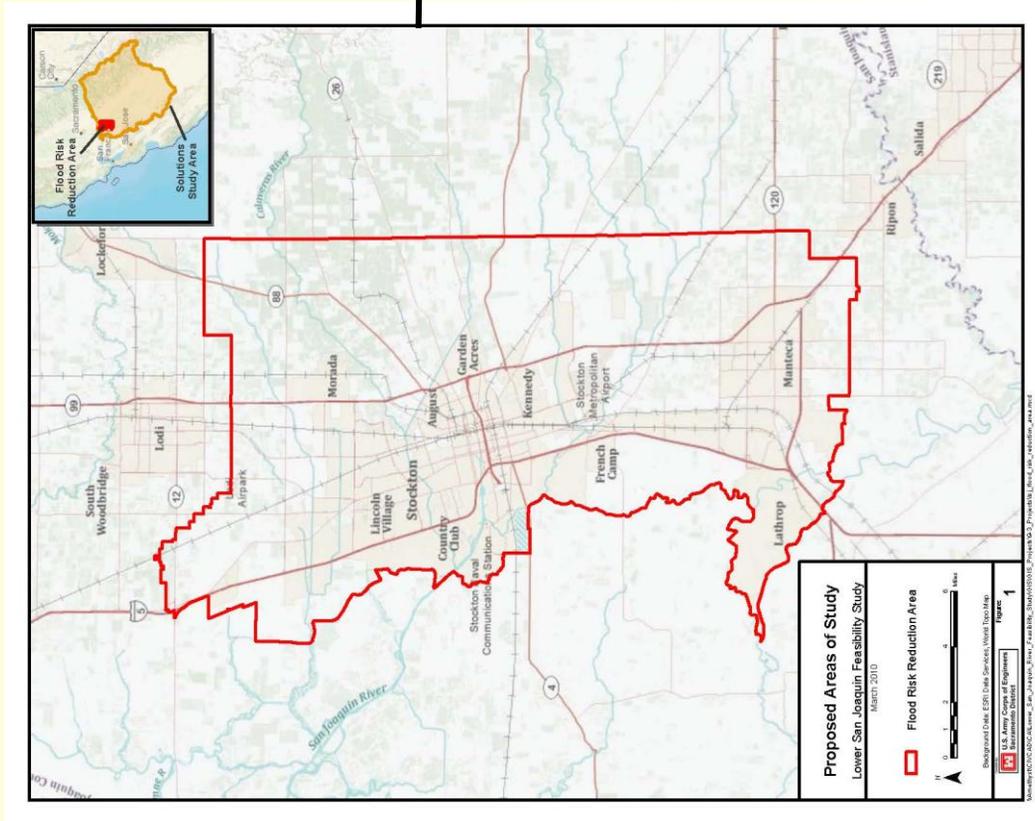
Central Valley Flood Protection Board  
(CVFPB)



San Joaquin Area Flood Control  
Agency (SJAFCA)  
•City of Stockton  
•San Joaquin County



# Study Area





# Study Goals

## **The Lower San Joaquin River Feasibility Study will:**

- Evaluate feasible flood protection alternatives for the City of Stockton and surrounding areas within San Joaquin County
- Recommend alternatives consistent with the Central Valley Flood Protection Plan (CVFPP).
- Determine the extent of the federal interest in a locally preferred plan providing 200-year or greater flood protection for Urban areas in accordance with SB-5



# Study History

- 2005
  - USACE Section 905(b) Analysis (Reconnaissance Study)
  - Established Potential federal Interest
- 2009
  - FCSA Between USACE & SJAFCA signed – Study Initiated
- 2010
  - Amendment #1 to the FCSA was approved, officially adding the State as a Non-federal Sponsor



# Study Funding

Federal	\$ 5,304,000	50%
State	\$ 2,652,000	25%
Local	<u>\$ 2,652,000</u>	<u>25%</u>
<b>Total</b>	<b>\$10,608,000</b>	<b>100%</b>

• Total Federal Funding to date = **\$2,215,110**

• FY 11-12 Federal Allocated Funding = **\$300,000**  
(15% of Requested funding)

• FY 12-13 Federal Allocated Funding = **???**  
(**\$2 million requested**)



# New Study Schedule “SMART Planning”

## New USACE Milestones **Est. Complete**

- Preliminary Screening June 2012
- Milestone #1 (Identify Alternatives) October 2012
- Milestone #2 (Tentatively Selected Plan) October 2013
- Milestone #3 - #4 (Agency Endorsements and Final Report ) September 2014
- Milestone #5 (Chief's Report) December 2014



# Staff Recommendation

## Adopt Resolution No. 2012-13 to:

1. Approve Amendment No. 2 to the Feasibility Cost Sharing Agreement between the Department of the Army, the State of California and the San Joaquin Area Flood Control Agency for the Lower San Joaquin River Feasibility Study; and
2. Delegate to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto; and
3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.



# Questions?

## CVFPB / DWR

Paul Larson, PE, Project Manager

916-574-1050

[plarson@water.ca.gov](mailto:plarson@water.ca.gov)

## USACE

Michelle Williams, Project Manager

916-557-7098

[michelle.r.williams@usace.army.mil](mailto:michelle.r.williams@usace.army.mil)

## SJAFCA

Roger Churchwell, PE,

Deputy Executive Director

209-937-8866

[roger.churchwell@ci.stockton.gov.us](mailto:roger.churchwell@ci.stockton.gov.us)



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

THIS AMENDMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S Army Engineer, Sacramento District and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the San Joaquin Area Flood Control Agency, (hereinafter "SJAFCA") represented by its Executive Director (hereinafter referred to collectively as the "Non-Federal Sponsors").

WITNESSETH, THAT:

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

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

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

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

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

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

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

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

1. TITLE

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

2. AGREEMENT

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

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

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

4. ARTICLE IX - TERMINATION OR SUSPENSION

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

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

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

#### 5. ARTICLE X - NOTICES

Paragraph A. is amended by striking

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

and replacing it with the following:

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

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

#### 6. ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Agreement is amended by insertion of the following article:

##### “ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

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

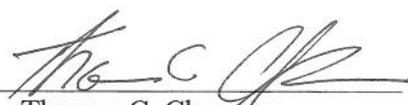
from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement."

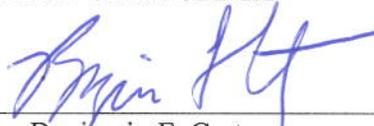
7. All other terms and conditions of the Agreement remain unchanged.

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

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

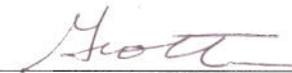
BY:   
Thomas C. Chapman  
Colonel, Corps of Engineers  
District Engineer

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

DATE: 25 Jun '10

DATE: 6/25/10

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

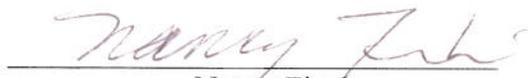
pc BY:   
James B Giottonini,  
Executive Director

DATE: 6/22/10

CERTIFICATE OF AUTHORITY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

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

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

  
\_\_\_\_\_  
Nancy Finch  
Counsel for Central Valley Flood Protection  
Board

CERTIFICATION REGARDING LOBBYING  
CENTRAL VALLEY FLOOD PROTECTION BOARD

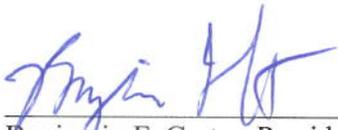
The undersigned certifies, to the best of his or her knowledge and belief that:

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

(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.

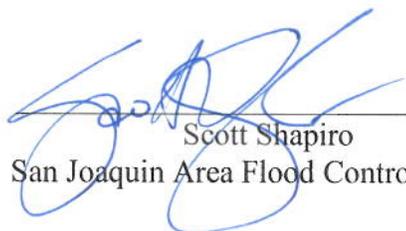
  
\_\_\_\_\_  
Benjamin F. Carter, President  
Central Valley Flood Protection Board

DATE: 6/25/10

CERTIFICATE OF AUTHORITY  
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

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

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

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

CERTIFICATION REGARDING LOBBYING  
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

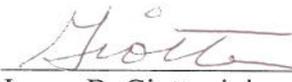
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

*Re*   
\_\_\_\_\_  
James B. Giottonini  
Executive Director

DATE: 6/22/10

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

THIS AGREEMENT is entered into this 19 day of Feb, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and the San Joaquin Area Flood Control Agency represented by its Executive Director (hereinafter the "Non-Federal Sponsor").

WITNESSETH, THAT:

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

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

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

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

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

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

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

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

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

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

#### ARTICLE I – DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *non-Federal in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *non-Federal in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *non-Federal in-kind contributions*.

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III - STUDY COORDINATION TEAM

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

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

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

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

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

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

#### ARTICLE IV - METHOD OF PAYMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE V - DISPUTE RESOLUTION

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

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for

Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

#### ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

#### ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Study*.

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

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

available to the parties to the Agreement.

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

#### ARTICLE X - NOTICES

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

If to the Non-Federal Sponsor:

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

If to the Government:

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

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

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

#### ARTICLE XI - CONFIDENTIALITY

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

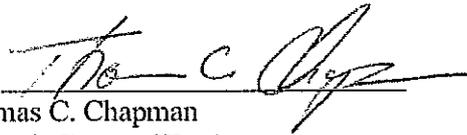
ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

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

DEPARTMENT OF THE ARMY

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

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

BY:   
James B. Giottonini  
Executive Director

DATE: 19 Feb 09

DATE: 2/19/09

CERTIFICATE OF AUTHORITY

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

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

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

CERTIFICATION REGARDING LOBBYING  
SAN JOAQUIN AREA FLOOD CONTROL AGENCY

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

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

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

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

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

BY:   
James B. Giottonini  
Executive Director

DATE: 2/19/09



LOCAL FEASIBILITY COST-SHARING AGREEMENT  
BETWEEN  
THE CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND  
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
FOR THE  
LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

This AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between The State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board) and the San Joaquin Area Flood Control Agency (hereinafter SJAFCA).

RECITALS:

WHEREAS, the U.S. Army Corps of Engineers (USACE) was authorized in the House Report 105-190 accompanying the 1998 Energy and Water Development Appropriations Act, Public Law 105-62 to develop and formulate comprehensive plans for the flood control and environmental restoration purposes in the Sacramento and San Joaquin River Basins; and

WHEREAS, the USACE completed a reconnaissance study of the Lower San Joaquin River in September 2004 and determined a feasibility study for the Lower San Joaquin River should proceed; and

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

WHEREAS, on November 16, 2007 the Board approved a letter of intent to become the Non-Federal sponsor for the Lower San Joaquin River Feasibility Study (Study); and

WHEREAS, on February 19, 2009 SJAFCA executed a Feasibility Cost Sharing Agreement (FCSA) for the Lower San Joaquin River Feasibility Study with the USACE; and

WHEREAS, the Board desires to become party to the FCSA as a non-federal sponsor, and SJAFCA and USACE desire the Board to become a party to the FCSA; and

WHEREAS, the Board and SJAFCA have agreed to be responsible for the functions of the Study Sponsors under the FCSA; and

WHEREAS, the Board and SJAFCA have agreed to the term of the Study and a maximum contribution described in the FCSA; and

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

NOW, THEREFORE, the Board and SJAFCA agree as follows:

1. Feasibility Cost Sharing Agreement. A copy of the executed FCSA is attached hereto as Exhibit A and incorporated by this reference. A copy of the draft amendment number 1, which adds the Board as a Non-Federal Study Sponsor is attached hereto as Exhibit B and incorporated by this reference. If the final FCSA amendment executed among the USACE, Board, and SJAFCA differs from the draft amendment number 1 to the feasibility cost share agreement, the Board and SJAFCA agree to renegotiate those provisions of this AGREEMENT that are affected by any changes in the final FCSA amendment. This AGREEMENT shall be subject to all applicable provisions of the FCSA and subsequent FCSA amendments.
2. Study Sponsor. The Board and SJAFCA have agreed to perform the functions of the Study Sponsor as stated in the FCSA.
3. Study Activities. Participation by the Board and SJAFCA in the Study is limited to the activities described in the Project Management Plan (PMP), an attachment to the FCSA.
4. Local Cost-Sharing.
  - A. Contributions.

- (1) The Board and SJAFCA agree that their contributions to the Study shall be as follows:

Table 1

Non-Federal Sponsor	Percent (Total Study)
Board	25
SJAFCA	25
Total	50

A portion of or all of the Non-Federal Sponsor contribution toward the Study as in the percentages shown in Table 1 above may be made up as either cash or In-Kind Services as defined in the FCSA. In-Kind Services are to be used as contributions after approval has been obtained from the USACE.

- (2) Cash contributed and/or authorized work performed by SJAFCA or their consultants prior to this AGREEMENT and after execution of original FCSA on February 19, 2009 shall be credited towards their non-federal contribution.
  - (3) At such time as the USACE notifies the Board and SJAFCA that payments are due under the FCSA, the Board and SJAFCA shall each pay or contribute its share directly to the USACE consistent with the FCSA. Checks shall be made payable to the Finance and Accounting Officer, USAED, Sacramento District, 1325 J Street, California 95814. SJAFCA shall provide notification of payment to the Board.
  - (4) Each party to this AGREEMENT shall be obligated only for the percentage shown in Table 1 above unless this AGREEMENT is amended in writing and signed by all parties.
  - (5) In the event that the Board does not secure any or all of the Board's share of Study costs during the term of this Agreement, SJAFCA may cover the short fall including the cost of any In-Kind Service unless SJAFCA decides to terminate pursuant to Paragraph 7; and there will be no remaining Board obligation toward SJAFCA.
- B. Final Accounting. The Board shall prepare and submit to SJAFCA a final accounting of the expenses and revenues of the Study at or prior to termination of the FCSA. At such time, any cash surplus remaining from the cash contributions provided for in paragraph A(4) shall be credited and returned to the Board and SJAFCA in proportion to their respective cash contributions added to their In Kind Services contributions. It is understood in making such final accounting that any cash payments to the USACE shall be deemed to have been made first from the principal of the cash contributions, and then from the earned interest only if the principal has been exhausted. Any earned interest remaining at the time of the final accounting shall be credited and returned to the Board and SJAFCA pro-rated according to the time the respective cash contributions were on deposit with the State's cash investment pool.
5. Disputes: SJAFCA and the Board shall continue with their responsibilities under this AGREEMENT during any dispute.
  6. Records and Reports.
    - A. The Board shall coordinate with the USACE in the maintenance of adequate records of the expenses and revenues of the Study, and such records shall be available for inspection and audit by the designated

representatives of SJAFCA within 14 days of any such records being compiled.

- B. The SJAFCA shall maintain adequate records of expenses and such records shall be available for inspection and audit by the Board for a period of ten years after final payment under this AGREEMENT.
  - C. The Board shall furnish SJAFCA with copies of any financial or progress reports received from the USACE within 14 days of receipt of such by the Board.
  - D. Upon completion of the Study, the Board shall furnish SJAFCA two copies of the USACE' Feasibility Report within 14 days of receipt of such by the Board.
6. Designated Representative. The designated representative by the Board for administration of this AGREEMENT shall be the Executive Officer of the Central Valley Flood Protection Board. The designated representative for SJAFCA for this AGREEMENT shall be the Deputy Executive Director. The SJAFCA shall notify the Board in writing of their representatives for purposes of this AGREEMENT.
7. Term of Agreement. The term of this AGREEMENT shall be co-extensive with the term of the FCSA. For good cause, SJAFCA or the Board may exercise their independent rights, under the FCSA, to terminate or suspend the FCSA. "Good Cause" includes but is not limited to either of the parties' inability to renegotiate the provisions of this AGREEMENT that are affected by any changes to the Final FCSA, the Board's inability to secure the balance of its share of Study cost, and SJAFCA's inability to appropriate necessary funding for its share of the Study cost. If the FCSA is terminated, either party may terminate or suspend this AGREEMENT with 60 days' written notice. This AGREEMENT shall not be effective until approval by the Department of General Services has occurred. Upon termination of this AGREEMENT, all data and information generated as part of the Study shall be made available to both parties.
8. Severability Clause. 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.
9. Notice. Any notice or other communication required under this AGREEMENT shall be in writing and shall be delivered in person to the other party or parties or deposited in the United States mail, postage prepaid, addressed to the other party or parties at the following addresses:

Jay Punia, Executive Officer (916) 574-0609  
The Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, CA 95821

Roger Churchwell, Deputy Executive Director (209) 937-8866  
San Joaquin Area Flood Control Agency  
22 East Weber Avenue, Room 301  
Stockton, CA 95202

10. Successors and Assigns. This AGREEMENT shall be binding upon the successors and assigns of the respective parties.
11. Obligation of Future Appropriations. Nothing herein shall constitute nor be deemed to constitute an obligation of future appropriations by the Legislature of the State of California.
12. Independent Contractor: SJAFCA, and its agents and employees, in the performance of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of the State.
13. Non-Discriminate Clause: During the performance of this Agreement, SJAFCA and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. SJAFCA and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SJAFCA and its 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. SJAFCA 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.

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

14. Child Support Compliance Act: For any Agreement in excess of \$100,000, SJAFCA acknowledges in accordance with Public Contract Code 7110, that:

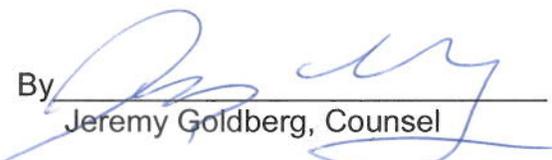
- a. SJAFCA recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. SJAFCA, 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.
15. Department of General Services Approval. This AGREEMENT shall not be effective until approval by the Department of General Services has occurred.

IN WITNESS WHEREOF, this AGREEMENT has been executed as of the day and year first above written.

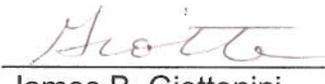
THE CENTRAL VALLEY  
FLOOD PROTECTION BOARD  
STATE OF CALIFORNIA

By   
Benjamin F. Carter, President  
Date: 6/25/10

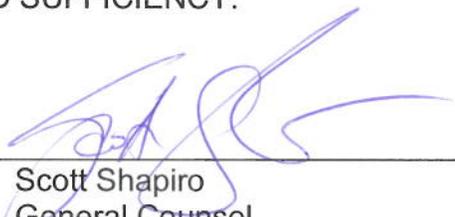
APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By   
Jeremy Goldberg, Counsel  
Date: 6/25/10

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

By   
James B. Giottonini  
Executive Director  
Date: 6/15/10

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By   
Scott Shapiro  
General Counsel  
for the San Joaquin Area Flood  
Control Agency  
Date: 6/15/10