

Board Packet for

Agenda Item 12B

Consider approval of Resolution No. 2014-08 to execute a Local Design Agreement with the Sacramento Area Flood Control Agency for pre-construction engineering and design of the remaining flood control improvements in the Natomas Basin primarily along the southern and eastern boundaries of the basin but including unfinished work along the Sacramento River and Natomas Cross Canal as part of the upcoming federal American River Watershed, Natomas Basin Project.

Local Design Agreement

American River Watershed – Natomas Basin Project

Meeting of the Central Valley Flood Protection Board

April 25, 2014

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REQUEST FOR BOARD ACTION

Consider approval of Resolution No. 2014-08 to:

1. Approve the Local Design Agreement with Sacramento Area Flood Control Agency (SAFCA) for the American River Watershed – Natomas Basin Project; and
2. Delegate to the Executive Officer the authority to sign the Local Design Agreement.

This Local Design Agreement will allow CVFPB to cost-share in the initial design efforts for the federally sponsored American River Watershed – Natomas Basin project. Only a small portion of the overall project design will be funded under this agreement, but it is a necessary first step to be able to leverage the federal funding recently allocated for the project. Without a local cost share, the federal funding cannot be used for the project.

BACKGROUND

The State and Sacramento Area Flood Control Agency (SAFCA) have been improving levees in the Natomas Basin since 2007 based on an urgent need to improve levees' performance capability and to return them to their certified status. With serious seepage and stability concerns, the community in Natomas has been at great risk for nearly 15 years for major challenges if there was a levee failure causing flooding in the basin.

The State and SAFCA have contributed more than \$400,000,000 toward about 40% of the levee improvements needed in the basin prior to, and in anticipation of a federally sponsored project. In March 2014, the US Army Corps of Engineers provided its first funds toward the federally sponsored project by allocating \$1,000,000 of federal "work plan" funds toward pre-construction engineering and design efforts for the remainder of the work in the basin. The USACE requires non-federal participation, and the Design Agreement is the contract required by USACE for non-federal participation. USACE cannot legally expend federal funds on the project without non-federal participation.

The Design Agreement is limited in scope, and its total costs are currently estimated at \$1,538,000, to design only portions of the remaining work. Its purpose is to get an early start on design work during the lengthy process of preparing and negotiating a Project

Cooperation Agreement (PCA) with USACE for the remainder of the project. The remaining designs, and all remaining construction work will be prepared under authority of the PCA. USACE estimates the unfinished work in the basin to cost over \$600,000,000¹. The Design Agreement will be superseded by the PCA when the PCA is fully executed, and costs contributed by CVFPB and SAFCA under the Design Agreement will be incorporated into the total project costs under PCA. Execution of the Design Agreement does not obligate in any way the CVFPB or SAFCA to enter into a PCA for this project in the future.

Beyond the Design Agreement, full federal participation in the Natomas Basin project is expected in the upcoming Water Resources Development Act bills under consideration in the 113th Congress. After WRDA passing, USACE can proceed with negotiating a PCA, and can prepare to review the \$360,000,000 in credit requests from the State and SAFCA for work already accomplished. With credit approval much of the non-federal share of expenses for remaining improvements will be paid by non-federal credit.

The remaining flood control improvements needed to protect the Natomas Basin are primarily on the southern and eastern boundaries of the basin, but include unfinished work along the Sacramento River and Natomas Cross Canal. Figure 1-1 shows the Natomas Basin project levees and vicinity.

SPONSORS

SAFCA at its April 17, 2014 Board meeting proposed to enter into a Design Agreement with USACE making SAFCA the non-federal sponsor for the initial design phase for the American River Watershed – Natomas Basin Project. SAFCA did so while contemporaneously proposing approval of the draft Local Design Agreement that is the subject of this staff report. The Local Design Agreement is contingent upon, and contains by reference, the Design Agreement.

SAFCA has agreed to be the signatory on the Design Agreement with USACE. This is unusual, as CVFPB traditionally has been the non-federal signatory on the Design Agreement with USACE. This arrangement will last approximately one month, and has been made to help expedite design and construction, because SAFCA can more expeditiously provide non-federal funding to support immediate progress on the design efforts on this project. At the outset, the CVFPB will participate in the project as signatory to the Local Design Agreement with SAFCA. However, SAFCA and USACE intend to amend the Design Agreement as soon as practical to allow CVFPB to return to its role as the primary non-federal sponsor for the project. Without this arrangement there is a risk of delaying the project for one year with a loss of federal funds due to the short timeframe to

¹ October 2010 values from USACE Post-Authorization Change Report for the American River Watershed for the Natomas Basin project.

the end of the federal fiscal year (September 30, 2014) and the need to secure matching non-federal funds as soon as possible. Indications from USACE suggest federal funding may be available for use in FY 2015 for construction.

COSTS

Total costs for the initial design under the Design Agreement are currently estimated at \$1,539,000, and will be shared 65% federal (\$1,000,000), and 35% non-federal (\$539,000). The non-federal share is further divided into 24.5% CVFPB (\$377,000) and 10.5% SAFCA (\$162,000) as defined in the Local Design Agreement.

PUBLIC INVOLVEMENT

Public involvement has been occurring on the State and SAFCA portion of the Natomas levee work since 2006. Many public outreach meetings, environmental scoping meetings, and environmental document comment periods have occurred in the last 8 years in the community. In addition, local, state and federal agency representatives have participated in these meetings. Future involvement will occur as each project is designed, and any deviations from the anticipated designs will be reviewed publically in project-level environmental documents.

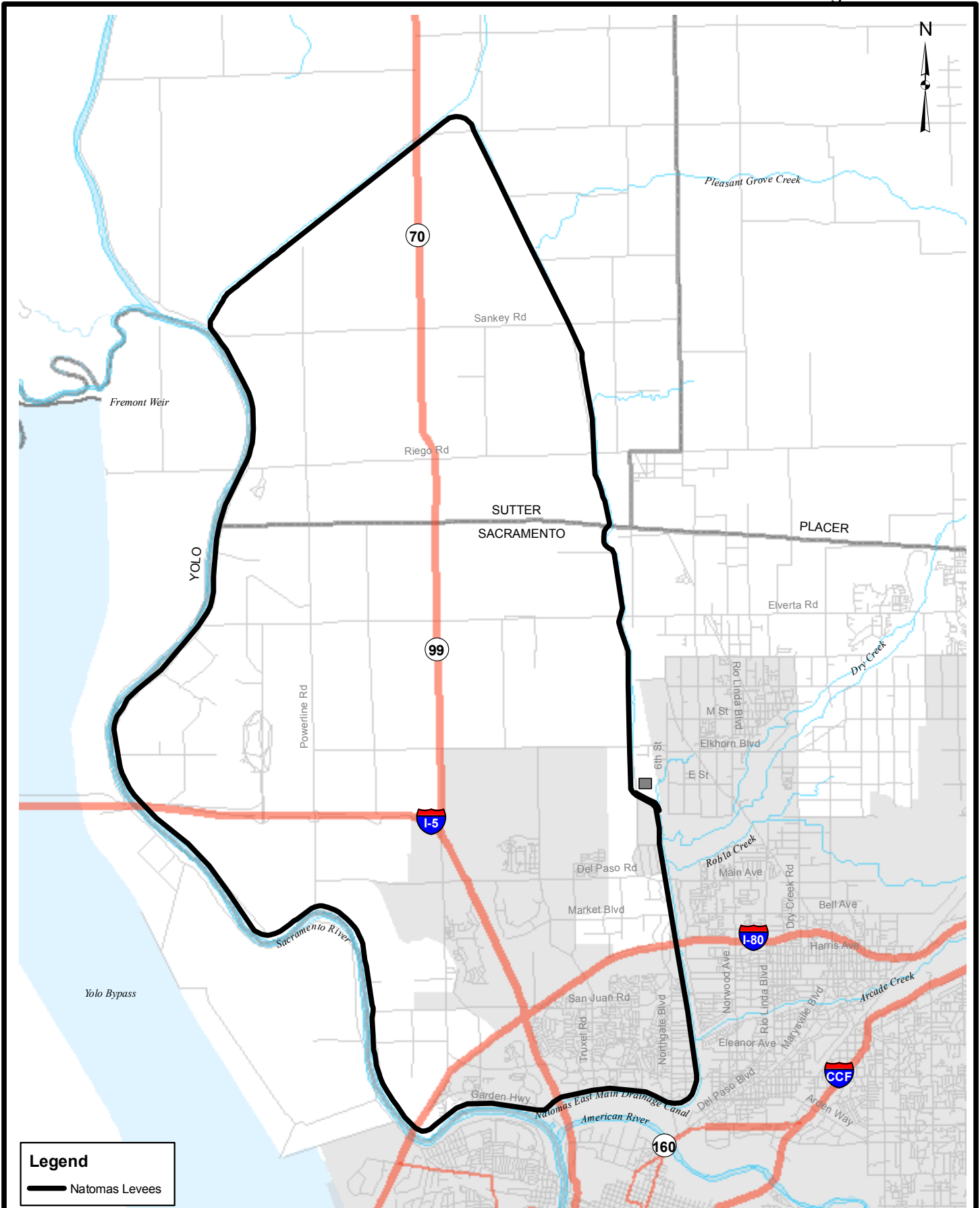
STAFF RECOMMENDATION

Staff recommends that the Board approve Resolution No. 2014-08 to approve the Local Design Agreement with Sacramento Area Flood Control Agency (SAFCA) for the American River Watershed – Natomas Basin Project; and to delegate to the Executive Officer the authority to sign the Local Design Agreement.

LIST OF ATTACHMENTS

- A. Local Design Agreement
 - a. Exhibit A to Local Design Agreement
- B. Proposed Resolution 2014-08

Figure 1-1



Legend
— Natomas Levees



Natomas SRF Project Levees

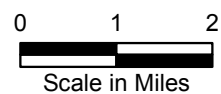


Figure 1-1

LOCAL DESIGN AGREEMENT
BETWEEN
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
AND
THE CENTRAL VALLEY FLOOD PROTECTION BOARD
FOR DESIGN OF THE
AMERICAN RIVER WATERSHED PROJECT -
NATOMAS BASIN

THIS AGREEMENT is made and entered into this _____ day of _____, 2014, by and between the Sacramento Area Flood Control Agency, a joint powers authority of the State of California and The State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board).

RECITALS:

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the Government) received Federal General Investigations funds for Fiscal Year 2014 for the Government to initiate design of the American River Watershed Project (hereinafter the Parent Project) at the Natomas Basin levees in Sacramento and Sutter counties, California; and

WHEREAS, the Sacramento Area Flood Control Agency (SAFCA), concurrent with this AGREEMENT is entering into a Design Agreement (attached hereto as Exhibit A) titled "Design Agreement Between The Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Watershed Project – Natomas Basin" for the provision of design for the Natomas Basin (an element of the Parent Project and hereinafter the *Project*, as defined in Article I.A. of that Agreement); and

WHEREAS, construction or implementation of the *Project* is authorized by Congress in Section 209 of the 1962 Flood Control Act (Pub. L. No. 87-874); and

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

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

WHEREAS, SAFCA intends to serve as the nonfederal sponsor of the *Project* on the condition that after execution of the Design Agreement and Local Design Agreement, SAFCA pursues an amendment to the Design Agreement with the Government replacing SAFCA with the Board as the nonfederal sponsor of the *Project*; and

WHEREAS, SAFCA intends to serve as the nonfederal sponsor of the *Project* on an interim basis as SAFCA is poised to move forward with design components of the project and funding to accommodate the Government's need for urgent action on the *Project*; and

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

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

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

SECTION I - DEFINITIONS

- A. The term "*Project*," "*total design costs*," "*period of design*," "*financial obligations for design*," "*non-federal proportionate share*," "*betterment*," "*federal program funds*," and "*fiscal year*," shall have the same meanings as defined in Article I of the Design Agreement.
- B. The terms "non-federal Sponsor" and "non-federal interest" shall mean SAFCA and the Board.

SECTION II – OBLIGATIONS OF SAFCA AND THE BOARD

- A. SAFCA shall afford the Board the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations provided the Government gives SAFCA the opportunity to review and comment on such solicitations. SAFCA may give the Board and the local maintenance entities, Reclamation District 1000 and the City of Sacramento, the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work to the extent possible within the time allotted by the Government. SAFCA shall also afford the Board and the local maintenance entities the opportunity to review and comment on all design products, and proposed contract modifications, including change orders, provided the Government gives SAFCA the opportunity to review and comment on such design products and proposed contract modifications. SAFCA shall consider in good faith the comments of the Board and local maintenance entities and forward them to the Government, but the contents of solicitations, award of contracts or commencement of design using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

- B. SAFCA and the Board shall provide, during the *period of design* a contribution equal to 35 percent of *total design costs*. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of the Design Agreement will be less than 35 percent of *total design costs* SAFCA and the Board shall provide a cash contribution, in accordance with Article IV.B. of the Design Agreement, in the amount necessary to meet the non-federal participants' 35 percent share of *total design costs*. SAFCA shall provide 30 percent of the non-federal share of *total design costs*, and the Board shall provide 70 percent of the non-federal share of total design costs unless otherwise directed by the State Legislature.
- C. SAFCA and the Board shall not use *federal program funds* to meet any of SAFCA's or the Board's obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.
- D. SAFCA or the Board may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, the design of *betterments* into the *Project*. Such requests shall be in writing and shall describe the *betterments* to be performed or provided. Upon receipt of such writing, SAFCA or the Board may request the Government to design *betterments* in accordance with Article II. E of the Design Agreement. SAFCA shall pay the entire cost for the design of *betterments* requested, unless otherwise specified by the Board. SAFCA shall provide the full amount of funds required to pay for the design of betterments in accordance with Section IV of this agreement and Article IV.D of the Design Agreement.
- E. This Agreement shall not be construed as obligating any party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving SAFCA or the Board of any future obligation under the terms of any agreement executed in connection with the Project in the future.

SECTION III - DESIGN COORDINATION TEAM

To provide for consistent and effective communication, SAFCA and the Board, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterpart named by SAFCA and the Board shall co-chair the Design Coordination Team. The costs of participation in the Design Coordination Team during the *period of design* shall be included in the total design costs and cost shared in accordance with the provisions of this Agreement. The additional provisions of Article III of the Design Agreement regarding the Design Coordination Team shall apply here also.

SECTION IV - METHOD OF PAYMENT

- A. SAFCA and the Board agree to pay their respective share of the *total design costs* in accordance with Article IV of the Design Agreement. On the effective date of this Agreement, SAFCA's share of the *total design costs* are projected to be \$161,538, and the Board's required contribution of the *total design costs* are projected to be \$376,923. If these projected amounts are to be increased, such increases shall be subject to the written consent of SAFCA and the Board.
- B. As the design proceeds, SAFCA and the Board, unless otherwise directed by the State Legislature, will attempt to maintain, subject to a final accounting, the 30 percent / 70 percent cost-sharing ratio of expenditures that is required by Section II.B. of this Agreement, in the following manner:
1. **Cash Payments to the Government:** SAFCA or the Board will forward to the Government the cash payments for the *non-federal proportionate share of total design costs* as required by Article IV of the Design Agreement. Such payments shall be made by SAFCA or the Board as provided in Section IV.C. of this Agreement.
 2. **Design Costs incurred by SAFCA or the Board:** SAFCA or the Board will provide to the partnering nonfederal sponsor a summary of actual costs it has incurred for design of the *Project* on a quarterly basis each July, October, January, and April, until the end of the *period of design*. The partnering nonfederal sponsor will submit itemized invoices bearing the appropriate contract number, in triplicate, no more frequently than monthly in arrears, for its expenditures for design, as determined to be eligible for credit in accordance with the provisions of Article IV of the Design Agreement to the addresses provided in Section XIII of this Agreement.
 3. **Request for Payment:** Either SAFCA or the Board may make a written request for payment to maintain the 30 percent / 70 percent cost-sharing ratio for costs incurred as described in Paragraph B of this Section.
- C. If the Government, SAFCA or the Board fail to make timely payments as required in the Design Agreement and this Agreement, the Agreements will be subject to termination or suspension under the provisions of Article X of the Design Agreement.

SECTION 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. These costs for services of a third party shall not be included as part of *total design costs* defined in Article I of the Design Agreement. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

SECTION VI – INDEMNIFICATION

SAFCA shall hold and save the Government and the Board free from all damages arising from design of the *Project* and design of any additional work pursuant to Section II.D. of this Agreement, except for claims and damages due to the fault or negligence of the Government, the Board, or their contractors.

SECTION VII - MAINTENANCE OF RECORDS; AUDIT

Within 60 calendar days of the effective date of this Agreement, SAFCA and the Board shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. SAFCA and the Board shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after the *period of design* or completion of *Project* construction, whichever is later, and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement, and by the Government in accordance with Article VII of the Design Agreement.

SECTION VIII – FINAL ACCOUNTING

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

SECTION IX – COMPLIANCE WITH STATE AND FEDERAL LAW

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

SECTION X – TERM OF AGREEMENT; AMENDMENT

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

SECTION XI – OBLIGATION OF FUTURE APPROPRIATIONS

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

SECTION XII – CONFIDENTIALITY

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

SECTION XIII - NOTICES

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

If to SAFCA:

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

If to the CVPFB:

Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Rm. 151
Sacramento, CA 95821

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

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

SECTION XIV – SEVERABILITY CLAUSE

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

SECTION XV – STANDARD CLAUSES

The special terms and conditions attached hereto as Exhibit B are incorporated by this reference. The general terms and conditions attached hereto as Exhibit C are incorporated by this reference.

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

SACRAMENTO AREA FLOOD CONTROL AGENCY

Approved as to legal form and sufficiency:

BY: _____
Richard M. Johnson
Executive Director

BY: _____
M. Holly Gilchrist, Counsel

DATE: _____

DATE: _____

CENTRAL VALLEY FLOOD PROTECTION BOARD OF THE STATE OF CALIFORNIA

Approved as to legal form and sufficiency:

BY: _____
William Edgar, President

BY: _____
Jeremy Goldberg, Counsel

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, a joint powers authority of the State of California, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Sacramento Area Flood Control Agency in connection with design of the ring levee system surrounding the Natomas Basin, 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 Sacramento Area Flood Control Agency have acted within their statutory authority.

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

M. Holly Gilchrist
Agency Counsel
Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

Richard M. Johnson
Executive Director
Sacramento Area Flood Control Agency

DATE: _____

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
DESIGN
FOR THE
AMERICAN RIVER WATERSHED PROJECT -
NATOMAS BASIN

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Sacramento District and the Sacramento Area Flood Control Agency, a joint powers authority of the State of California (hereinafter the “Non-Federal Sponsor”).

WITNESSETH, THAT:

WHEREAS, Federal General Investigations funds for Fiscal Year 2014, included funds for the Government to initiate design of the American River Watershed Project (hereinafter the “Parent Project”) at the Natomas Basin levees in Sacramento and Sutter Counties, California;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for the provision of design for the Natomas Basin (an element of the Parent Project and hereinafter the “*Project*”, as defined in Article I.A. of this Agreement);

WHEREAS, construction or implementation of the *Project* is authorized by Congress in Section 209 of the 1962 Flood Control Act (Pub. L. No. 87-874);

WHEREAS, Section 105(c) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215), provides that the costs of design of a water resources project shall be shared in the same percentage as the purposes of such project;

WHEREAS, the Government and the Non-Federal Sponsor agree that, during the *period of design*, the Non-Federal Sponsor shall contribute 35 percent of *total design costs* and that, if a Project Partnership Agreement for construction of the *Project* is executed between the Government and a non-Federal interest, such non-Federal interest shall contribute any remaining portion of the non-Federal share of the costs of design in accordance with the provisions of such Project Partnership Agreement;

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 *Project* 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 design and implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean design of improvements to the ring levee system surrounding the Natomas Basin as generally described in the Chief’s Report for the American River Common Features Project, Natomas Post Authorization Change Report and Interim General Reevaluation Report, dated October, 2010 and approved by Lieutenant General Van Antwerp on December 30, 2010.

B. The term “*total design 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 design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government’s costs of review processes required by the Government; 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; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Design 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 VII.B. and Article VII.C. of this Agreement. The term does not include any costs of additional work under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; the Non-Federal Sponsor’s costs of negotiating this Agreement; any costs of a contract for an Independent External Peer Review panel; or any costs of negotiating a project partnership agreement for the *Project* or separable element thereof.

C. The term “*period of design*” shall mean the time from the effective date of this Agreement to the date that a Project Partnership Agreement for construction of the *Project*, or a separable element thereof, is executed between the Government and a non-Federal interest or the date that this Agreement is terminated in accordance with Article X of this Agreement, whichever is earlier.

D. The term “*financial obligations for design*” shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total design costs*.

E. The term “*non-Federal proportionate share*” shall mean the ratio of the Non-Federal Sponsor’s total contribution of funds required by Article II.B.1. of this Agreement to *financial obligations for design*, as projected by the Government.

F. The term “*betterment*” shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

G. 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.

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

I. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on July 1 and ending on June 30.

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 design the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. To the extent possible, the Government shall design the *Project* in accordance with the Project Management Plan for the *Project* developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work,

prior to the Government's issuance of such solicitations. 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 design using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. 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 *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

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

5. As of the effective date of this Agreement, \$1,000,000 of Federal funds for design have been provided by Congress for the Parent Project of which \$1,000,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Parent Project or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. The Non-Federal Sponsor shall contribute 35 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide funds in accordance with Article IV.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's share of 35 percent of *total design costs* if the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement will be less than such share.

2. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 35 percent of *total design costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; and (b) the value

of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

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

D. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

E. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article IV.D. of this Agreement.

1. Inclusion of *betterments* in the design of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of designing the features of the *Project* that include *betterments* between *total design costs* and the costs of the additional work.

2. Preparation of a floodplain management plan, required by Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), in connection with design of the flood risk management features or hurricane and storm damage reduction features of the *Project*.

F. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of the *Project*, or a separable element thereof, the Government, in accordance with the provisions of this paragraph, shall include the amount of *total design costs* in total project costs for the *Project*, or separable element thereof. Further, the Government, in accordance with the provisions of this paragraph, shall afford credit toward the non-Federal interest's share of total project costs for the *Project*, or separable element thereof, for the Non-Federal Sponsor's contributions toward *total design costs* under this Agreement.

1. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of the entire *Project*, the Government shall include the amount of *total design costs* in total project costs for the *Project*. Further, the Government shall afford credit toward the non-Federal interest's share of total project

costs for the Non-Federal Sponsor's contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government.

2. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of a separable element of the *Project*, the Government shall determine the portion of *total design costs* that are allocable to such separable element and include such amount in total project costs for such separable element. Further, the Government shall determine the amount of the Non-Federal Sponsor's contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government, that are allocable or attributable to such separable element and shall afford credit for such amount toward the non-Federal interest's share of total project costs of such separable element.

3. If the Government and a non-Federal interest do not enter into a Project Partnership Agreement for construction of the *Project* or a separable element thereof, the Government shall not be obligated to refund or reimburse the Non-Federal Sponsor, in whole or in part, for the Non-Federal Sponsor's contribution toward *total design costs*. Further, refund or reimbursement by the Government for any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement is subject to the availability of funds.

4. Notwithstanding any other provision of Article II.F. of this Agreement, any amount credited for the value of the Non-Federal Sponsor's contributions toward *total design costs* provided in accordance with Articles III and VII of this Agreement shall not be applied toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(a)(1)(A)).

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Partnership Agreement.

ARTICLE III - DESIGN 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 Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Design Coordination Team.

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

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; scheduling of reports and work products; plans and specifications; real property and relocation requirements for construction of the *Project*; design contract awards and modifications; design contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Design Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design of the *Project*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations.

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

1. As of the effective date of this Agreement, *total design costs* are projected to be \$1,538,500; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement is projected to be \$64,600; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement is projected to be \$473,800; the *non-Federal proportionate share* is projected to be 32.15 percent; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement are projected to be \$0. 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 30 days after execution of this agreement and by each quarterly anniversary thereof until the conclusion of the *period of design* 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 design costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement; the *non-Federal proportionate share*; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

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

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; (b) the projected *non-Federal proportionate share of financial obligations for design* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations for design* using the Government's own forces through the first quarter. Within 30 calendar days of receipt of such notice, 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 District EROC 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 design of the *Project* 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 design of the *Project*, 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 for design* 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 for design* of the *Project* 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 for design* 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 to cover: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; and (b) the *non-Federal proportionate share of financial obligations for design* as *financial obligations for design* 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 30 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 design* 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 design 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 *total design costs* 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 District EROC 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 *total design costs* exceed the Non-Federal Sponsor’s total required share thereof, the Government, subject to the availability of funds, 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. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.E. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government’s financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, 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 30 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.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work 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 of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, 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 District EROC L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund 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 and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

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 – HOLD AND SAVE

Subject to the provisions of Article XIV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and design of any additional work pursuant to Article II.E. of this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - 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 Office of Management and Budget (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 *Project* shall be included in *total design 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 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 design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - 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 IX - 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 X - TERMINATION OR SUSPENSION

A. 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 the Assistant Secretary of the Army (Civil Works) determines that continuation of design of the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, 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 design 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.

C. In the event the Government determines that modifications to the *Project* are required and that additional authorization by Congress will be required before the Government may construct such modifications, the Government shall notify the Non-Federal Sponsor in writing of such determinations and shall terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, both parties shall conclude their activities relating to the *Project* 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 *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

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 XI - NOTICES

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

If to the Non-Federal Sponsor:

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

If to the Government:

U.S. Army Corps of Engineers
District Engineer, Sacramento District
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 XII - CONFIDENTIALITY

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

ARTICLE XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XIV - 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 or the Board of Directors of SAFCA, where creating such an obligation would be inconsistent with Section 1 or Section 18 of Article XVI of the Constitution of the State of California.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request 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 Sponsor reasonably believes 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 Sponsor shall use its 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 Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related 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

SACRAMENTO AREA FLOOD
CONTROL AGENCY

BY: _____

Colonel Michael Farrell
District Engineer
Sacramento District

BY: _____

Richard M. Johnson
Executive Director
Sacramento Area Flood Control
Agency

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, a joint powers authority of the State of California, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Sacramento Area Flood Control Agency in connection with design of the ring levee system surrounding the Natomas Basin, 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 Sacramento Area Flood Control Agency have acted within their statutory authority.

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

M. Holly Gilchrist
Agency Counsel
Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

Richard M. Johnson
Executive Director
Sacramento Area Flood Control Agency

DATE: _____

**EXHIBIT B –Special Terms and Conditions for
Department of Water Resources
(Local Project Design Agreement Receivable (LPDA))**

1. WORKER'S COMPENSATION CLAUSE: Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.
2. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
3. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
4. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
5. AVAILABILITY OF FUNDS: Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
6. AMERICANS WITH DISABILITIES ACT: By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
7. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
8. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace,
 2. The person's or organization's policy of maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation and employee assistance programs, and
 4. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed contract or grant:
 1. Will receive a copy of the company's drug-free policy statement, and
 2. Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

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

9. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
10. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
11. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
12. SUBCONTRACTING: The Contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified in the bid or agreed to during negotiations for this Agreement, or as are specifically authorized by the Contract Manager during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates or consultants shall be subject to the prior written approval of the Contract Manager. Contractor warrants, represents and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable laws, codes, rules and regulations in the performance of this Agreement. Should State determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the contract terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, State may request substitution of the subcontractor.
13. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
14. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 9557 is attached to this Exhibit and made part of this contract by this reference.
15. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: N/A
16. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

17. **TIMELINESS:** Time is of the essence in this Agreement.
18. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
19. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
20. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
 - a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Government Code Section 4553).
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Government Code Section 4554).
21. **CHILD SUPPORT COMPLIANCE ACT:** "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance therewith, that:
 - a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
22. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.
23. **PRIORITY HIRING CONSIDERATION:** If this Contractor includes in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

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

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

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

26. CONFLICT OF INTEREST:

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

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

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

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

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

- b. Penalty for Violation:

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

c. Members of Boards and Commissions:

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

a. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition for Consulting Services Contracts:

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

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

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

GTC 610

EXHIBIT C

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

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

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

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

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

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

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

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
AMERICAN RIVER WATERSHED
NATOMAS BASIN PROJECT
LOCAL DESIGN AGREEMENT
RESOLUTION 2014-08

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the Government) received Federal General Investigations funds for Fiscal Year 2014 for the Government to initiate design of the American River Watershed Project (hereinafter the Parent Project) at the Natomas Basin levees in Sacramento and Sutter counties, California; and

WHEREAS, the Sacramento Area Flood Control Agency (SAFCA), concurrent with the Local Design Agreement is entering into a Design Agreement titled "Design Agreement Between The Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Watershed Project – Natomas Basin" for the provision of design for the Natomas Basin (an element of the Parent Project and hereinafter the Project, as defined in Article I.A. of that Agreement); and

WHEREAS, construction or implementation of the Project is authorized by Congress in Section 209 of the 1962 Flood Control Act (Pub. L. No. 87-874); and

WHEREAS, California Water Code section 8615 authorizes the Board to participate in planning projects for flood control on the Sacramento River and its tributaries; and

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

WHEREAS, SAFCA intends to serve as the nonfederal sponsor of the Project on the condition that after execution of the Design Agreement and Local Design Agreement, SAFCA pursues an amendment to the Design Agreement with the Government to replace SAFCA with the Board as the nonfederal sponsor of the Project; and

WHEREAS, SAFCA intends to serve as the nonfederal sponsor of the Project on an interim basis as SAFCA is poised to move forward with design components of the project and funding to accommodate the Government's need for urgent action on the Project; and

WHEREAS, the nonfederal sponsor's obligations are set forth in the Design Agreement, and a draft of the Design Agreement is attached to the Local Design Agreement as Exhibit A and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Approves the Local Design Agreement with SAFCA for the American River Watershed – Natomas Basin Project in substantially the form attached here to.
2. Delegates to the Executive Officer the authority to sign the Local Design Agreement.

By: _____ Date: _____
William Edgar
President

By: _____ Date: _____
Jane Dolan
Secretary

Approved as to Legal Form and Sufficiency:

By: _____ Date: _____

Jeremy Goldberg
Staff Counsel