

**Meeting of the Central Valley Flood Protection Board  
August 28, 2015**

**Staff Report**

**Letter of Support for the Project Described in the American River Common  
Features General Re-evaluation Report**

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**1.0 ITEM**

Consider approval of Resolution No. 2015-12 which:

1. Approves a Letter of Support, from the Central Valley Flood Protection Board to the U.S. Army Corps of Engineers, to serve as the non-Federal Sponsor for the Improvements described in the General Reevaluation Report for the American River Watershed Common Features Project.
2. Delegates to the Executive Officer the authority to sign the Letter of Support in substantially the form attached hereto.

**2.0 SPONSORS**

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

**3.0 LOCATION**

The American River Common Features General Re-evaluation Report study area will include the City of Sacramento, the Natomas Basin, levees along the left bank of the Natomas East main Drainage Canal, Arcade Creek, Magpie Creek, left bank of the Sacramento River Between RM 45.5 and RM 60 and areas along the North and South Banks of the American River (see Attachment A, Location Map).

**4.0 PROJECT DESCRIPTION:**

The primary goal of the American River Common Features General Re-evaluation Report (ARCF – GRR) is to identify flood risk management problems within the city of Sacramento and surrounding areas, Natomas Basin, along the left bank of the Natomas East main Drainage Canal, Arcade Creek, Magpie Creek, the left bank of the Sacramento River between RM 45.5 and RM 60, to analyze potential solutions to those problems, and to recommend a plan that satisfies the U.S Army Corps of Engineers' (USACE) National Economic Development (NED) planning process and meets the intentions of the Central Valley Flood Protection Plan. The GRR will focus on reducing flood risk to private and public property of the urban areas, and the State infrastructure within. The resulting federally recommended project will be in accordance with State and Federal levee design criteria. A joint Environmental Impact Report/Environmental

Impact Statement under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) will be prepared with the GRR.

## **5.0 PROJECT BACKGROUND**

The American River Common Features Project was initiated in 1996 by Congress, whereby common flood risk reduction elements considered within the 1996 Supplemental Feasibility Study were authorized through the Water Resources Development Act of 1996. After the 1997 flood event, the USACE Sacramento District realized that under-seepage (as opposed to through-seepage) was a significant concern throughout the entire system of levees protecting the Sacramento area. A GRR was underway for the Natomas area, but due to deep under-seepage issues throughout the entire Sacramento area, the Natomas GRR was expanded to include the entire Sacramento area thereby becoming the ARCF – GRR.

### **5.1 ESTIMATED COSTS:**

USACE currently estimates the total cost of the GRR to be \$14.9 million. Under the Feasibility Cost Share Agreement (FCSA) for the GRR the Non-federal cost is \$7.45 million.

### **5.2 COST ALLOCATION:**

The total current estimated GRR cost includes costs for creditable work that will be performed by the Non-federal Sponsors. The LFCSA will establish a 50/50 cost share between SAFCA and the Board for the \$7.45 million non-federal share of the FCSA. The Board and SAFCA will each be responsible for the estimated \$3.7 million in non-federal contribution. The non-federal sponsors have contributed their responsible cost shares for completion of the Report.

### **5.3 PROJECT BENEFITS**

The primary benefits of completing the GRR which includes an LPP are:

- Risk reduction delivered in a timely manner which considers potential funding and agency coordination constraints;
- Systemwide improvements which are in accordance with State policy and engineering guidance; and
- Establishment of a partnership with USACE which allows necessary coordination of State flood risk management goals outlined in the Central Valley Flood Protection Plan.

## **6.0 STAFF ANALYSIS**

The Recommended Plan for the GRR is the Locally Preferred Plan (LPP). The LPP includes the construction of fix-in-place levee remediation measures to address seepage, slope stability, erosion, and overtopping concerns identified for the American

and Sacramento River Levee, NEMDC, Arcade, Dry/Robla, and Magpie Creeks. In addition, the LPP would reduce the need for levee raises along the Sacramento River and recommend Sacramento Bypass and Weir widening.

To maintain the current schedule for processing the GRR, SAFCA and the Board's willingness to serve as the non-federal sponsors for the project outlined in the GRR should be promptly communicated to the USACE. The State is the non-Federal sponsor of the American River Watershed Common Features Project and will be expected to provide the required assurances of non-Federal cooperation should Congress decides to approve the plan. The State's willingness to provide these assurances needs to be communicated in a timely way to the USACE. This action is dependent upon the Boards approval.

## **7.0 AUTHORIZATIONS**

Federal: WRDA 1999 (section 336); WRDA 1996 (Section 101); WRDA 1986 (section 902)

State: California Water Code Section 12670.10, 12670.11, 12670.12, 12670.14, and 12670.16

## **8.0 STAFF RECOMMENDATION**

Consider approval of Resolution No. 2015-12 which:

1. Approves a Letter of Support, from the Central Valley Flood Protection Board to the U.S. Army Corps of Engineers, to serve as the non-Federal Sponsor for the Improvements described in the General Reevaluation Report for the American River Watershed Common Features Project.
2. Delegates to the Executive Officer the authority to sign the Letter of Support in substantially the form attached hereto.

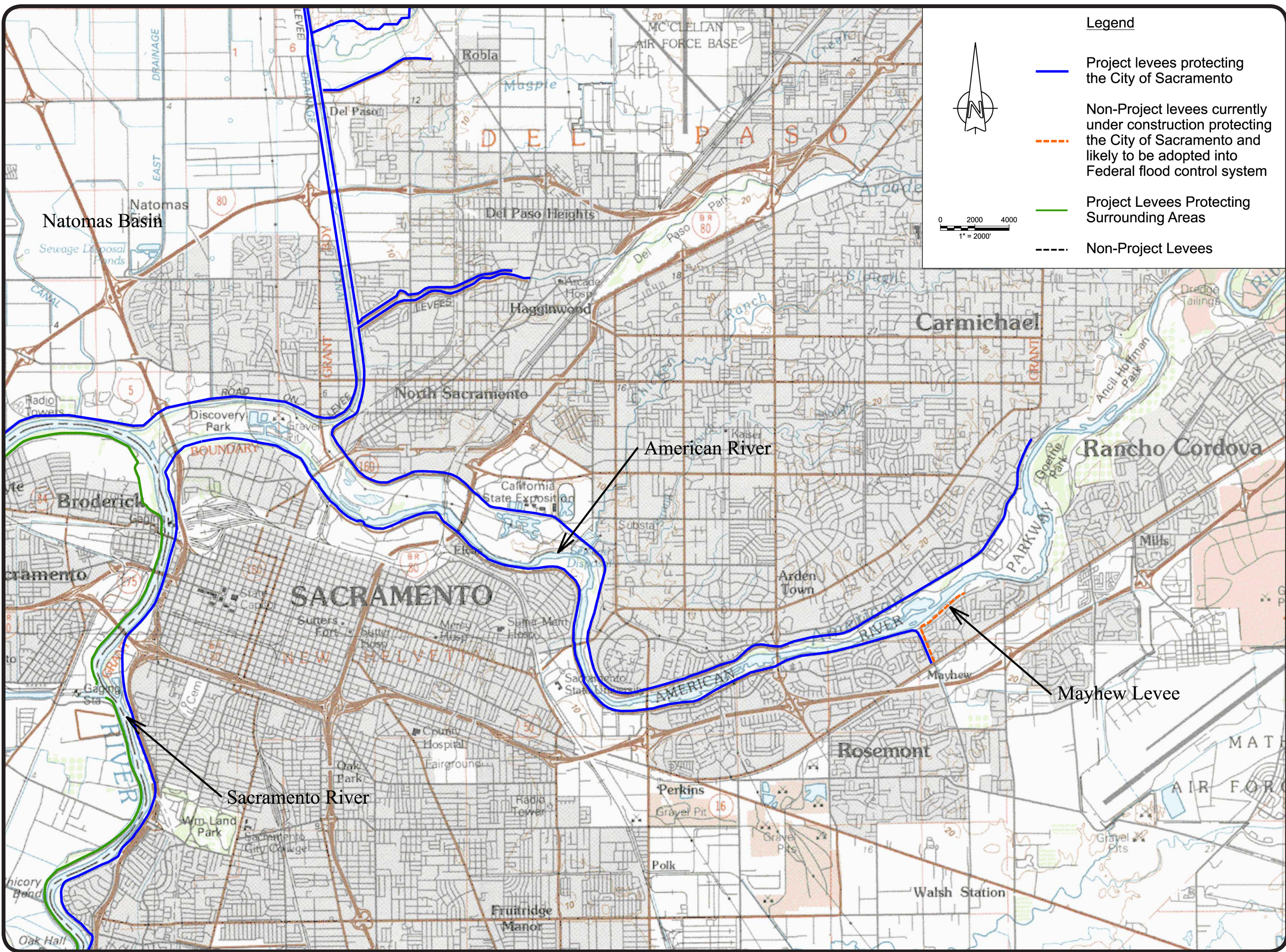
## **9.0 LIST OF ATTACHMENTS**

- A. Location Maps
- B. Resolution 2015-12
- C. Draft Letter of Support
- D. Current Feasibility Cost Share Agreement (FCSA)
- E. Current Local Feasibility Cost Share Agreement (LFCSA)
- F. PowerPoint Presentation\*

Attachments in development to be presented at the August 28, 2015 Board Meeting

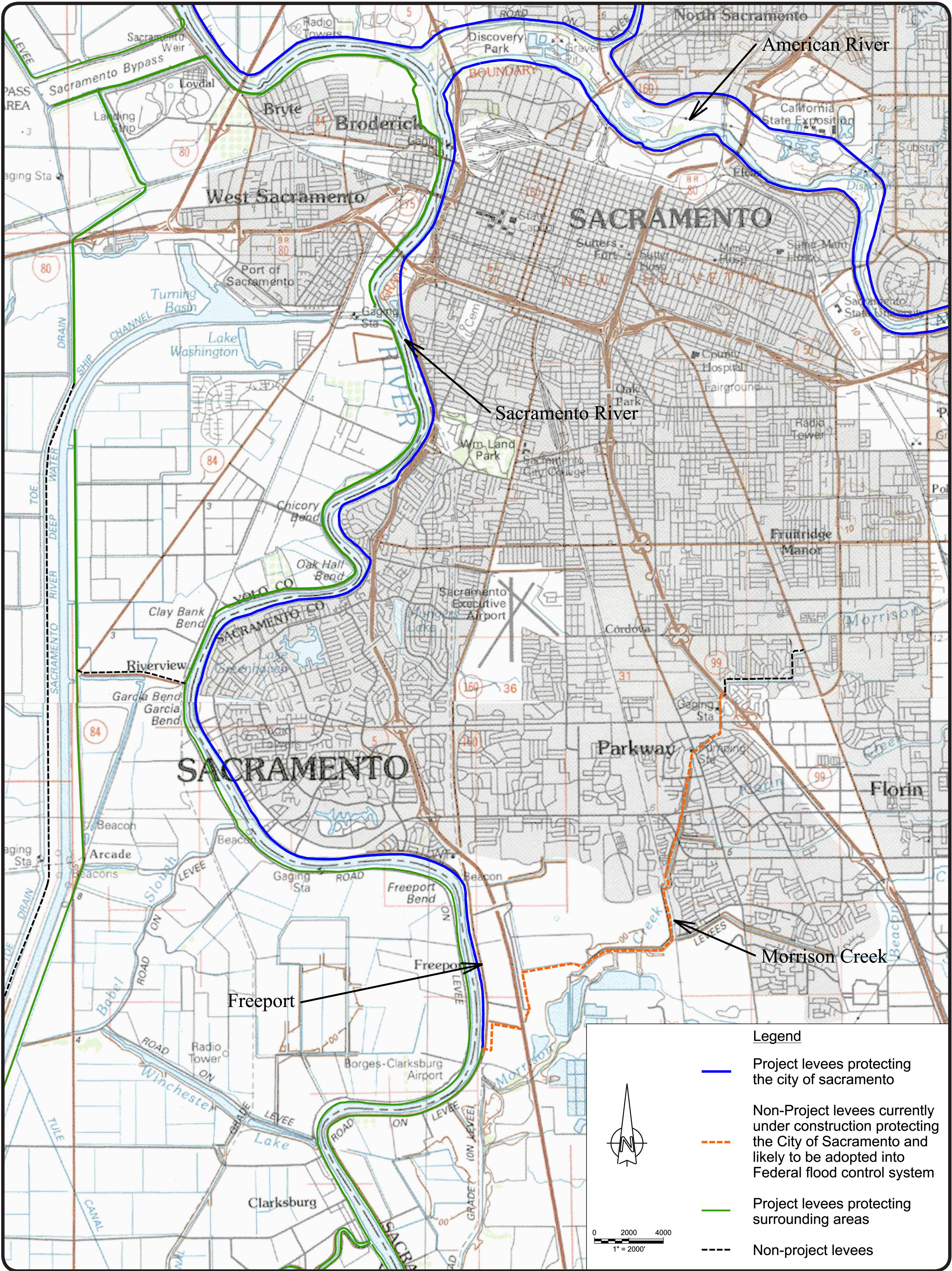


Lower American River





Sacramento River from American River to Freeport





STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2015-12

RESOLUTION APPROVING A LETTER OF SUPPORT  
BE SENT TO THE U.S. ARMY CORPS OF ENGINEERS  
INDICATING THE CENTRAL VALLEY FLOOD PROTECTION BOARD'S  
SUPPORT  
FOR THE PROJECT DESCRIBED  
IN THE GENERAL REEVALUATION REPORT

**WHEREAS**, the Sacramento Area Flood Control Agency (SAFCA) and the Central Valley Flood Protection Board (Board) are the non-Federal Sponsors of the American River Common Features Project and are cooperating with the U.S. Army Corps of Engineers (USACE) in preparing a general reevaluation report which will recommend a significant expansion of the project along the Sacramento and American Rivers and their tributaries, initially authorized by Congress in 1996; and

**WHEREAS**, construction along the American River and Natomas Cross Canal, authorized by the Water Resources Development Act (WRDA) of 1996 and 1999, has been underway since 1998 under the Project Cooperation Agreement between the Central Valley Flood Protection Board and the U.S. Army Corps of Engineers for the American River Common Features Project; and

**WHEREAS**, SAFCA intends to initiate additional levee improvement projects to the Water Resource Development Act authorization along the American and Sacramento Rivers and their tributaries through the State Urban Flood Risk Reduction Program to achieve the minimum federal 100-year and State 200-year level of flood protection for urban areas in the region; and

**WHEREAS**, in addition to the completed GRR, USACE is requesting a Letter of Support expressing the Board's intent to serve as a non-Federal Sponsor of the project described in the GRR; and

**WHEREAS**, on August 20, 2015, SAFCA passed Resolution 2015-XXX expressing their intent to serve as a local sponsor of the project described in the GRR; and

**WHEREAS**, Board participation is authorized under Water Code section 12670.12.



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

1. Approves a Letter of Support, from the Central Valley Flood Protection Board to the U.S. Army Corps of Engineers, to serve as the non-Federal Sponsor for the improvements described in the General Reevaluation Report for the American River Watershed Common Features Project.
2. Delegates to the Executive Officer the authority to sign the Letter of Support in substantially the form attached hereto.

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
William H. Edger  
President

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Board Secretary

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
Robin Brewer  
Staff Counsel



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



Colonel Michael J. Farrell  
District Engineer  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

**Subject: Letter of Support for the General Reevaluation Report for the American River Common Features Project**

Dear Colonel Farrell:

With this Letter of Support, The Central Valley Flood Protection Board (Board) confirms its intent to participate with the U.S. Army Corps of Engineers (USACE) as the Non-Federal Sponsor with the Sacramento Area Flood Control Agency (SAFCA) on the project described in the General Reevaluation Report for American River Watershed Common Features Project currently in preparation.

The Board conditionally supports this proposed Federal Authorization, which intends to reduce the flood risk along the Lower American River, Sacramento River, and their tributaries.

The Board approved this Letter of Support at its August 28, 2015 meeting. SAFCA has also confirmed their support and intent to participate as a local Non-Federal Sponsor by way of a resolution, which was approved by SAFCA's Board on August 20, 2015 (attached).

Please note that this Letter of Intent is not an obligation of future appropriations of State funds by the State Legislature. We look forward to working with the USACE and SAFCA on this critically important project.

If you have any questions, please contact me at (916) 653-5434 or [Leslie.Gallagher@water.ca.gov](mailto:Leslie.Gallagher@water.ca.gov), or your staff may contact Michael Sabbaghian, Chief Flood Risk Reduction Projects Branch, at (916) 574-1404 or [Michael.Sabbaghian@water.ca.gov](mailto:Michael.Sabbaghian@water.ca.gov).

Sincerely

Leslie Gallagher Acting Executive Officer  
Central Valley Flood Protection Board



Cc:

SAFCA  
Richard M. Johnson  
Pete Ghelfi

USACE SPK  
Dan Tibbitts  
Alicia Kirchner  
Nicole Ortega-Jewell

DWR  
Eric Koch  
Robert E. Scarborough  
Ajala Ali

CVFPB  
Len Marino



AGREEMENT NUMBER 4600010868
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of Water Resources

CONTRACTOR'S NAME



Department of the Army Corps of Engineers (USACE)

2. The term of this Agreement is: April 14, 2014 through Upon completion  
This Agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this Agreement is: \$ 7,450,000.00  
Seven Million, Four Hundred Fifty Thousand Dollars and Zero Cents.
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

See the attached Agreement Between The Department Of The Army And The California Central Valley Flood Protection Board For The American River Common Features Project General Reevaluation Study.

**Signatures appear on page 11 of 13 of this agreement.**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		Asst. Chief Counsel, DWR 3/25/15 Approved as to legal form and sufficiency.
AGENCY NAME		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		



AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD  
FOR THE  
AMERICAN RIVER COMMON FEATURES PROJECT  
GENERAL REEVALUATION STUDY

THIS AGREEMENT is entered into this 14 day of APRIL, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and The State of California's Central Valley Flood Protection Board (hereinafter the "Non-Federal Sponsor"), represented by the President, Central Valley Flood Protection Board.

WITNESSETH, THAT:

WHEREAS, construction of the American River Common Features Project at the city and county of Sacramento in the State of California was authorized by Congress in Section 101 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended by Section 366 of WRDA 1999 (Pub. L. No. 106-53, § 366, 113 Stat. 269, 319-320 (1999)) and the Energy and Water Development Act of 2004 (Pub. L. No. 108-137, § 129, 121 Stat. 1844, 1947 (2003));

WHEREAS, the Government initiated a general reevaluation study (hereinafter the "*Study*") without executing a feasibility cost sharing agreement for such *Study*;

WHEREAS, the *Study* has been performed by the Government through the effective date of this Agreement with the Non-Federal Sponsor contributing 25 percent of the costs of the *Study*;

WHEREAS, the Government has determined it is necessary to execute a feasibility cost sharing agreement with the Non-Federal Sponsor to share the costs of the *Study* in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a));

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

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



Federal Sponsor, and facilitate the successful *Study*.

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

#### ARTICLE I – DEFINITIONS

A. The term "*Study*" shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management at the city and county of Sacramento in the State of California, as generally described in the American River Common Features General Reevaluation Report Project Management Plan (PMP).

B. The term "*total study costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study* including the costs of the *Study* incurred by the Non-Federal Sponsor and the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government's costs of preparation of the decision document for the *Study*; the Government's costs of Agency Technical Review and other 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 Study Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; 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 design agreement for a project or separable element thereof.

C. 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.

D. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

E. The term "*PMP*" shall mean the project management plan, and any modifications thereto, developed by the Government, in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study*.



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

A. The Government, using funds appropriated by the Congress of the United States (hereinafter the "Congress") and funds provided by the Non-Federal Sponsor, shall complete expeditiously the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

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

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

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

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

B. The Non-Federal Sponsor shall contribute 50 percent of *total study costs*. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share after subtracting the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement. The Non-Federal Sponsor shall provide such funds in accordance with Article IV.B. of this Agreement.

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



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

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

### ARTICLE III - STUDY COORDINATION TEAM

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

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

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

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

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this



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

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, costs incurred, and the contributions provided by the parties.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$14,900,000; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be \$620,000; and the amount of funds determined in accordance with Article II.B. of this Agreement is projected to be \$7,450,000. These amounts 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 \_\_\_\_\_ and by each quarterly anniversary thereof until the *Study* is completed and all relevant claims and appeals are resolved, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B. of this Agreement; ; and the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B. 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 Sponsor's share of *total study costs* incurred prior to the effective date of this Agreement; (b) the projected non-Federal share of costs to be incurred for any contracts awarded during the first quarter; and (c) the projected non-Federal share of costs incurred 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 providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.



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

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected non-Federal share of costs 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 incur costs 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 share of such costs. 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 Sponsor's share of *total study costs* incurred prior to the effective date of this Agreement; and (b) the non-Federal share of costs as they 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 costs for the current contract or to cover the Non-Federal Sponsor's share of costs for work performed using the Government's own forces in the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon completion of the *Study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, 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 required share of *total study 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 final accounting show that the total contributions provided by the Non-Federal Sponsor exceed the Non-Federal Sponsor's required share of *total study costs*, 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.

#### ARTICLE V - DISPUTE RESOLUTION

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

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

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

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

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - FEDERAL AND STATE LAWS

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

#### ARTICLE VIII - RELATIONSHIP OF PARTIES

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

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

#### ARTICLE IX - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect



without penalty to suspend or terminate future performance under this Agreement.

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

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

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

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

#### ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given

under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Central Valley Flood Protection Board  
President, Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, CA 95821

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 XI - CONFIDENTIALITY

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

#### ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

#### ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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



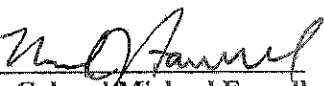
B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means 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

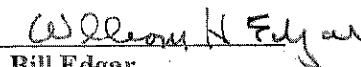
The State of California's Central Valley  
Flood Protection Board

BY:



Colonel Michael Farrell  
District Engineer  
Sacramento District

BY:



Bill Edgar  
President, Central Valley Flood  
Protection Board

DATE:

14 APR 14

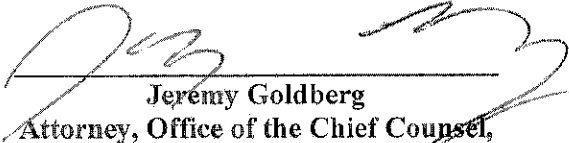
DATE:

3-28-2014

## CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of The State of California's Central Valley Flood Protection Board for this project, that The State of California's Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and The State of California's Central Valley Flood Protection Board in connection with the feasibility study for the American River Common Features Project's General Reevaluation Report, 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 State of California's Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
April 3rd day of April 20 14.

  
\_\_\_\_\_  
Jeremy Goldberg  
Attorney, Office of the Chief Counsel,  
California Department of Water Resources



## 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.

Bill Edgar  
Bill Edgar  
President Central Valley Flood  
Protection Board

DATE: 3-28-2014

AGREEMENT NUMBER

4600010867

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of Water Resources

CONTRACTOR'S NAME

Sacramento Area Flood Control Agency (SAFCA)

2. The term of this Agreement is: April 3, 2014 through Upon completion  
This Agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this Agreement is: \$ 3,725,000.00  
Three-Million, Seven-Hundred Twenty-Five Thousand Dollars and Zero Cents.
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

See the attached Local Feasibility Cost Sharing Agreement Between The Central Valley Flood Protection Board and The Sacramento Area Flood Control Agency For The American River Common Features Project General Reevaluation Study.

**Signatures appear on page 6 of 6 of this agreement.**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General  
Services Use Only

Approved as to legal form  
and sufficiency:  
Asst. Chief Counsel, DWR



LOCAL FEASIBILITY COST SHARING AGREEMENT  
BETWEEN  
THE CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND THE  
SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR THE  
AMERICAN RIVER COMMON FEATURES PROJECT  
GENERAL REEVALUATION STUDY

This AGREEMENT is made and entered into this 3 day of April, 2014, by and between The State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board) and the Sacramento Area Flood Control Agency, a joint powers authority.

RECITALS:

WHEREAS, construction of the American River Common Features Project at the city and county of Sacramento in the State of California was authorized by Congress in Section 101 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended by Section 366 of WRDA 1999 (Pub. L. No. 106-53, § 366, 113 Stat. 269, 319-320 (1999)) and the Energy and Water Development Act of 2004 (Pub. L. No. 108-137, § 129, 121 Stat. 1844, 1947 (2003));

WHEREAS, Water Code sections 8615 authorizes the Board to participate in the Study; and

WHEREAS, the Board and the Sacramento Area Flood Control Agency (SAFCA) are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and

WHEREAS, the Board concurrent with this AGREEMENT is entering into a Feasibility Cost Sharing Agreement titled "Agreement Between the Department of the Army(hereinafter the "Government"), represented by the U.S. Army Corp of Engineers, Sacramento District, and the California Central Valley Flood Protection Board for the American River Common Features Project General Reevaluation Study" (FCSA), to be completed in accordance with the Project Management Plan (PMP); and WHEREAS, the Government initiated a general reevaluation study (hereinafter the "Study") without executing a feasibility cost sharing agreement for such Study;

WHEREAS, the Study has been performed by the Government through the effective date of this Agreement with the Non-Federal Sponsor contributing 25 percent of the costs of the Study;

WHEREAS, the Government has determined it is necessary to execute a feasibility cost sharing agreement with the Board as the "Non-Federal Sponsor" to share the costs of the Study in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a));

WHEREAS, the Board and SAFCA have agreed to be responsible for the functions of the "Non-Federal Sponsor" under the FCSA and have agreed to the terms of the Study and a maximum contribution described in the FCSA; and

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

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

1. Feasibility Cost Sharing Agreement. A copy of the FCSA is attached hereto as Exhibit A and incorporated by this reference. This AGREEMENT shall be subject to all applicable provisions of the FCSA and subsequent FCSA amendments.
2. Study Sponsor. The Board and SAFCA have agreed to jointly perform the functions of the Non-Federal Sponsor as stated in the FCSA.
3. Study Activities. Participation by the Board and SAFCA in the Study is limited to those activities described in the PMP, an attachment to the FCSA.
4. Local Cost-Sharing.

A. Contributions.

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

Table 1

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

All or a portion of each of the respective contributions of SAFCA and the Board toward the Study costs may be either cash or In-Kind Services as defined in the FCSA. SAFCA's In-Kind Services shall be subject to the requirements of the FCSA and may only be used as contributions after approval has been obtained from the USACE.

- 2) Cash contributed and/or authorized work performed by the SAFCA or their consultants prior to this AGREEMENT may only be used as contributions after approval has been obtained from the USACE.
- 3) At such time as the USACE notifies the Board that payments are due under the FCSA, SAFCA shall pay or contribute its respective share directly to the Board. Checks shall be made payable to the Department of Water Resources, Governmental Accounting Office, P.O. Box 942836 Sacramento, California 94236-0001. SAFCA shall provide notification of



payment to the Board, and the Board shall provide notification of payment to SAFCA.

- 4) Each party to this AGREEMENT shall be obligated only for the percentage shown in Table 1 above unless this AGREEMENT is amended in writing and signed by both parties.
  - 5) In the event that the Board does not secure any or all of the Board's share of Study costs during the term of this Agreement, SAFCA may, in its sole discretion, temporarily advance funds and/or In-Kind Services to cover the shortfall including the cost of any In-Kind Services. Alternatively, the SAFCA may decide to terminate this AGREEMENT pursuant to paragraph 8. The Board shall diligently pursue securing its share of such Study costs and, when secured, fund the non-federal share until such advance by SAFCA is covered, without interest thereon. In lieu of funding the non-federal share as described above, the Board, in its sole discretion, may opt to repay SAFCA for any such advance in whole or in part; in the event the Board opts to make a partial repayment, the Board shall cover the balance due by funding the non-federal share until the SAFCA's advance is recovered, without interest thereon.
- B. Final Accounting. The Board shall prepare and submit to SAFCA a final accounting of the expenses and revenues of the Study at or prior to termination of the FCSA. At such time, any cash surplus remaining from the cash contributions provided for in Paragraph 4.A.4 shall be credited and returned to the Board and SAFCA in proportion to their respective cash contributions added to their In-Kind Services contributions. It is understood in making such final accounting that any cash payments to the USACE shall be deemed to have been made first from the principal of the cash contributions, and then from the earned interest only if the principal has been exhausted. Any earned interest remaining at the time of the final accounting shall be credited and returned to the Board and SAFCA pro-rated according to the time the respective cash contributions were on deposit with the State's cash investment pool.
5. Disputes: SAFCA and the Board shall continue with their responsibilities under this AGREEMENT during any dispute, subject to the parties' respective rights to terminate or suspend the FCSA and this Agreement pursuant to paragraph 8 herein.
  6. Records and Reports.
    - A. The Board shall coordinate with the USACE in the maintenance of adequate records of the expenses and revenues of the Study, and such records shall be available for inspection and audit by the designated representatives of SAFCA within 14 days of any such records being compiled.

- B. SAFCA shall maintain adequate records of expenses and such records shall be available for inspection and audit by the Board throughout the life of this AGREEMENT and for a period of ten years after the termination of this AGREEMENT.
- C. The Board shall furnish SAFCA with copies of any financial or progress reports received from the USACE within 14 days of receipt of such by the Board.
- D. Upon completion of the Study, the Board shall furnish SAFCA two copies of the USACE Study within 14 days of receipt of such by the Board.
7. Designated Representative. The designated representative by the Board for administration of this AGREEMENT shall be the Executive Officer of the Central Valley Flood Protection Board. The designated representative for SAFCA for this AGREEMENT shall be its Executive Director. SAFCA may change its designated representative at any time, and shall notify the Board in writing of any such change.
8. Term of Agreement. The term of this AGREEMENT shall be co-extensive with the term of the FCSA. For good cause, the Board may exercise their independent rights, under the FCSA, to terminate or suspend the FCSA. "Good Cause" includes but is not limited to either of the parties' inability to renegotiate the provisions of this AGREEMENT that are affected by any changes to the Final FCSA, the Board's inability to secure the balance of its share of Study cost, and/or SAFCA's inability to appropriate necessary funding for its share of the Study cost, in which event SAFCA may terminate this Agreement (subject, however, to the provisions of Section 4.A.5 hereof). If the FCSA is terminated, this AGREEMENT shall be deemed terminated as of the effective date of the FCSA termination. Upon termination of this AGREEMENT, all data and information generated as part of the Study shall be made available to both parties.
9. Severability Clause. If any provision of this AGREEMENT is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this AGREEMENT be construed to remain fully valid, enforceable and binding on the parties.
10. Notice. Any notice or other communication required under this AGREEMENT shall be in writing and shall be delivered in person to the other party or parties or deposited in the United States mail, postage prepaid, addressed to the other party or parties at the following addresses:

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

(916) 574-0609

Executive Director

(916) 874-7606



Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

11. Successors and Assigns. This AGREEMENT shall be binding upon the successors and assigns of the respective parties.
12. Obligation of Future Appropriations. Nothing herein shall constitute nor be deemed to constitute an obligation of future appropriations by the Legislature of the State of California or an obligation of future appropriations by the SAFCA Board of Directors.
13. Independent Contractor: SAFCA, and its agents and employees, in the performance of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of the State.
14. Non-Discrimination Clause: During the performance of this AGREEMENT, neither the Board nor SAFCA and its subcontractors shall 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. SAFCA and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SAFCA and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. SAFCA 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.

SAFCA and the Board shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the AGREEMENT.

15. Child Support Compliance Act: For any Agreement in excess of \$100,000, the SAFCA acknowledges in accordance with Public Contract Code 7110, that:
  - A. SAFCA 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. SAFCA, 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.

16. Department of General Services Approval. This AGREEMENT shall not be effective until approval by the Department of General Services has occurred.

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

THE CENTRAL VALLEY  
FLOOD PROTECTION BOARD  
STATE OF CALIFORNIA

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By William H. Edgar  
William Edgar, President

By Jeremy D. Goldberg  
Jeremy D. Goldberg, Legal Counsel

Date: 3-28-2014

Date: 4.3.14

SACRAMENTO AREA FLOOD CONTROL  
AGENCY

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By Richard M. Johnson  
Richard M. Johnson  
Executive Director

By M. Holly Gilchrist  
M. Holly Gilchrist  
Agency Counsel

Date: 26 MAR 2014

Date: 3-26-14

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD  
FOR THE  
AMERICAN RIVER COMMON FEATURES PROJECT  
GENERAL REEVALUATION STUDY

THIS AGREEMENT is entered into this 14 day of APRIL, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and The State of California's Central Valley Flood Protection Board (hereinafter the "Non-Federal Sponsor"), represented by the President, Central Valley Flood Protection Board.

WITNESSETH, THAT:

WHEREAS, construction of the American River Common Features Project at the city and county of Sacramento in the State of California was authorized by Congress in Section 101 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended by Section 366 of WRDA 1999 (Pub. L. No. 106-53, § 366, 113 Stat. 269, 319-320 (1999)) and the Energy and Water Development Act of 2004 (Pub. L. No. 108-137, § 129, 121 Stat. 1844, 1947 (2003));

WHEREAS, the Government initiated a general reevaluation study (hereinafter the "*Study*") without executing a feasibility cost sharing agreement for such *Study*;

WHEREAS, the *Study* has been performed by the Government through the effective date of this Agreement with the Non-Federal Sponsor contributing 25 percent of the costs of the *Study*;

WHEREAS, the Government has determined it is necessary to execute a feasibility cost sharing agreement with the Non-Federal Sponsor to share the costs of the *Study* in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a));

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

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



Federal Sponsor, and facilitate the successful *Study*.

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

#### ARTICLE I – DEFINITIONS

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management at the city and county of Sacramento in the State of California, as generally described in the American River Common Features General Reevaluation Report Project Management Plan (PMP).

B. The term “*total study costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study* including the costs of the *Study* incurred by the Non-Federal Sponsor and the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the Government’s costs of Agency Technical Review and other 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 Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; 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 design agreement for a project or separable element thereof.

C. 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.

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

E. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study*.

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

A. The Government, using funds appropriated by the Congress of the United States (hereinafter the "Congress") and funds provided by the Non-Federal Sponsor, shall complete expeditiously the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

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

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

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

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

B. The Non-Federal Sponsor shall contribute 50 percent of *total study costs*. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share after subtracting the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement. The Non-Federal Sponsor shall provide such funds in accordance with Article IV.B. of this Agreement.

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

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

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

### ARTICLE III - STUDY COORDINATION TEAM

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

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

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

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

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this



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

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, costs incurred, and the contributions provided by the parties.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$14,900,000; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be \$620,000; and the amount of funds determined in accordance with Article II.B. of this Agreement is projected to be \$7,450,000. These amounts 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 \_\_\_\_\_ and by each quarterly anniversary thereof until the *Study* is completed and all relevant claims and appeals are resolved, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B. of this Agreement; ; and the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B. 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 Sponsor's share of *total study costs* incurred prior to the effective date of this Agreement; (b) the projected non-Federal share of costs to be incurred for any contracts awarded during the first quarter; and (c) the projected non-Federal share of costs incurred 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 providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

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

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected non-Federal share of costs 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 incur costs 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 share of such costs. 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 Sponsor's share of *total study costs* incurred prior to the effective date of this Agreement; and (b) the non-Federal share of costs as they 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 costs for the current contract or to cover the Non-Federal Sponsor's share of costs for work performed using the Government's own forces in the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon completion of the *Study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, 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 required share of *total study 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 final accounting show that the total contributions provided by the Non-Federal Sponsor exceed the Non-Federal Sponsor's required share of *total study costs*, 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.

#### ARTICLE V - DISPUTE RESOLUTION

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

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

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.



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

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - FEDERAL AND STATE LAWS

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

#### ARTICLE VIII - RELATIONSHIP OF PARTIES

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

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

#### ARTICLE IX - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect

without penalty to suspend or terminate future performance under this Agreement.

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

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

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

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

#### ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given

under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Central Valley Flood Protection Board  
President, Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, CA 95821

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 XI - CONFIDENTIALITY

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

#### ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

#### ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

The State of California's Central Valley  
Flood Protection Board

BY: 

Colonel Michael Farrell  
District Engineer  
Sacramento District

BY: 

Bill Edgar  
President, Central Valley Flood  
Protection Board

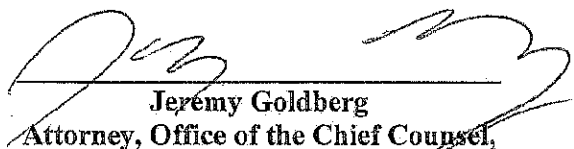
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DATE: 3-28-2014

## CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of The State of California's Central Valley Flood Protection Board for this project, that The State of California's Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and The State of California's Central Valley Flood Protection Board in connection with the feasibility study for the American River Common Features Project's General Reevaluation Report, 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 State of California's Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
April 3rd day of April 20 14.

  
\_\_\_\_\_  
**Jeremy Goldberg**  
**Attorney, Office of the Chief Counsel,**  
**California Department of Water Resources**

## CERTIFICATION REGARDING LOBBYING

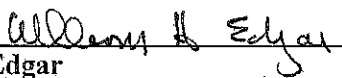
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

  
Bill Edgar  
President Central Valley Flood  
Protection Board

DATE: 3 - 28 - 2014