

Meeting of the Central Valley Flood Protection Board  
July 28, 2023

**Staff Report for the  
Feasibility Cost Share Agreement &  
Local Feasibility Cost Share Agreement**

**Yolo Bypass Cache Slough  
Comprehensive Study**

**Agenda Item No. 10A**

**1.0 – ITEM**

Adopt Resolution 2023-07 (**Attachment A**), through which the Board:

1. Agrees to enter into a Feasibility Cost Share Agreement (FCSA) (**Attachment B**) and a Local Feasibility Cost Share Agreement (LFCSA) (**Attachment C**) for the Yolo Bypass Comprehensive Study (Study); and
2. Delegates the Board Counsel the authority to sign the Certificate of Authority (**Attachment D**) affirming that the Board is a legally constituted public body with full authority and legal capability to perform the terms of the Yolo Bypass Feasibility Cost Sharing Agreement among the Department of the Army (USACE), the Central Valley Flood Protection Board (Board), and the Sacramento Area Flood Control Agency (SAFCA) in connection with the (Study); and
3. Delegates the Executive Officer the authority to sign the Self-Certification of Financial Capability (**Attachment E**) under the Agreement between the Board, the USACE, and the SAFCA indicating financial consideration capability to satisfy the obligations for the Study; and
4. Delegates the Board President the authority to sign the Certification regarding lobbying (**Attachment F**).

**2.0 – SPONSORS**

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

### **3.0 – STUDY LOCATION**

The Study area, also known as the Yolo Bypass Cache Slough Region, is located south of Colusa and Live Oak; east of Davis and Woodland; west of Wheatland, Rio Linda, and Elk Grove; and north of Antioch. It overlaps with Sacramento, Yolo, and Solano Counties. It encompasses project levees along the Sacramento River, Feather River, and the American River. Figure 1 shows a draft study area.

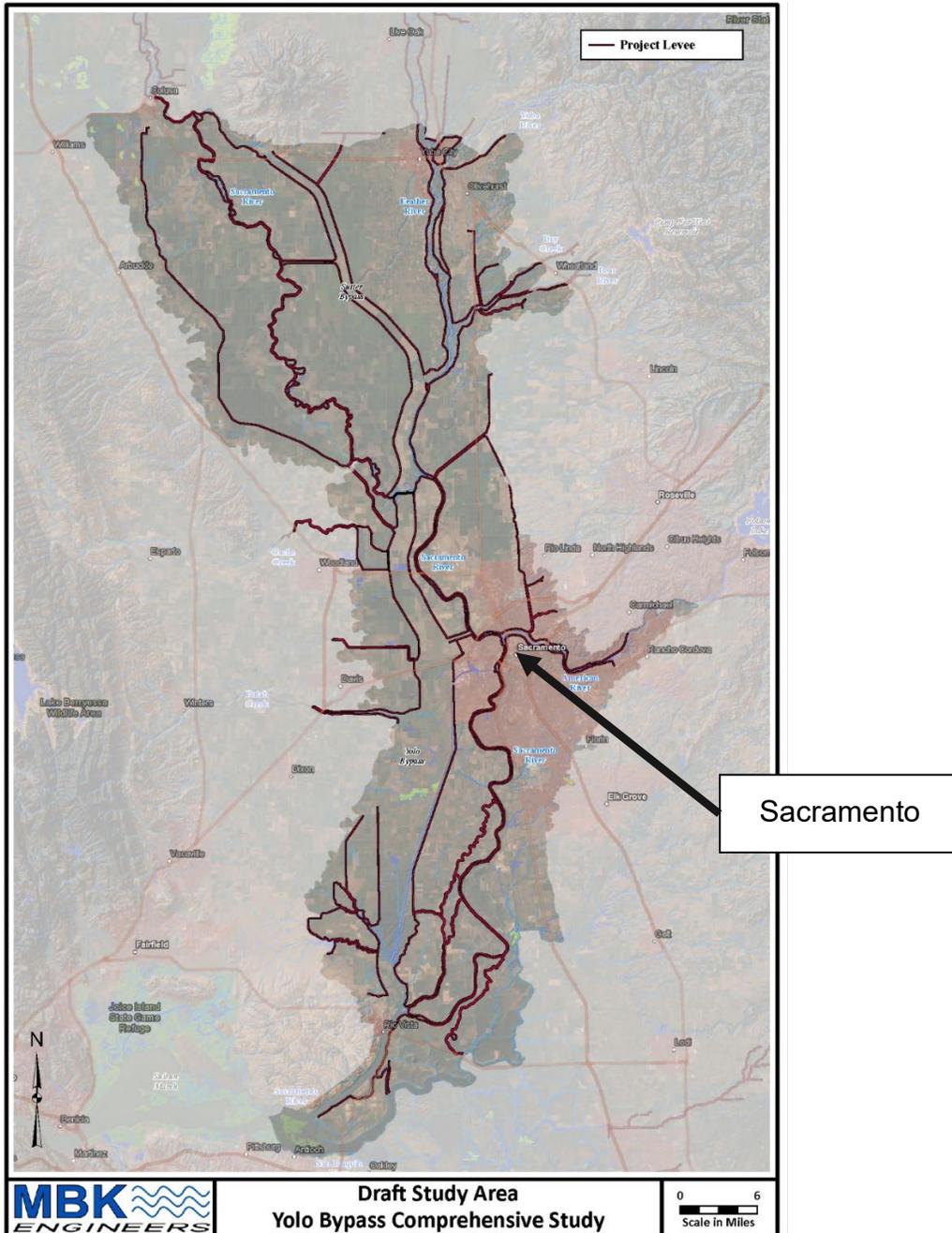


Figure 1. Study Location Map

## **4.0 – STUDY DESCRIPTION**

The Study will evaluate alternatives and the preparation of a decision document that, as appropriate, recommends coordinated and implementable solutions for the comprehensive management of the Sacramento River in the vicinity of the Yolo Bypass System for the purposes of flood risk management, ecosystem restoration, water supply, and recreation. The Fiscal Year 2023 Federal Appropriations Bill approved a New Study Start and provided the initial Federal funding for the study. Consistent with USACE policy, estimated cost of the Study is \$3 million dollars, of which the USACE will contribute \$1,500,000; and SAFCA and Board will contribute \$1,500,000.

## **5.0 – ANALYSIS**

### **5.1 BACKGROUND**

In 2016, the Yolo Bypass Cache Slough Partnership was formed to collaboratively prioritize and resolve barriers to success and collaborate to implement projects that provide benefits to the YBCS region.

In 2020, the Water Resources Development Act (WRDA) 2020 was passed, authorizing a Comprehensive Study for the YBCS region for the purposes of flood risk management, ecosystem restoration, water supply, hydropower, and recreation. WRDA 2020 also states that the YBCS Partnership should be consulted in conducting the Study. Depending on the Study's findings there may be opportunities for Congress to consider federal authorization and funding for additional activities.

Senate Bill (SB) 369, passed in 2021 and codified in California Water Code Section 8512, established the Yolo Bypass Cache Slough Partnership Multibenefit Program (YBCS program) to support the development and implementation of projects within the Yolo Bypass and Cache Slough region. SB 369 endorsed the YBCS Partnership and its role in development and implementation of projects in the YBCS region to meet the following objectives: (a) prioritize projects that accommodate multiple objectives in the YBCS region, (b) identify project implementation challenges and work collaboratively to resolve those challenges, (c) develop programmatic and expedited approaches for regulatory compliance, (d) identify funding mechanisms for project implementation and long-term operations and maintenance, and (e) develop strategies to foster regional agricultural sustainability, recreational opportunities, and long-term water supply reliability.

Currently, the Department of Water Resources (DWR) and the Board are developing the YBCS Master Plan and Program Environmental Impact Report (Program EIR), which are programmatic documents that describe the proposed YBCS program purpose, potential project components and rationale for inclusion, phasing, and measurement of individual and cumulative project impacts and benefits against proposed hydraulic and environmental baselines. The YBCS Master Plan will be

developed in coordination with the Study to efficiently leverage existing tools and data and ensure consistent findings and recommendations.

## **5.2 FUNDING**

The FCSA targets completion of the investigation within three years at a total cost of no more than three million dollars. The cost-sharing for the study is based on a 50% contribution by the federal government, with the non-federal sponsors' (Board and SAFCA) 50% contribution provided in cash and in-kind contributions. The non-federal sponsors will use the LFCSA for cost share purposes. Consistent with the Memorandum of Understanding (MOU) between the Board and DWR, DWR's Division of Flood Management (DFM) will be performing project management on behalf of the Board, including managing the State's contribution.

The FCSA specifically defines acceptable in-kind contributions from the Non-Federal Sponsor's (NFS's) as those "planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the feasibility study and that are identified in the Project Management Plan (PMP) and performed or provided by the NFS after the effective date of this agreement and in accordance with the PMP." The NFS's will leverage all work under the Study accordingly.

State funding for the Study is included in the Budget Act of 2023. SAFCA will make an initial payment of \$25,000 to the USACE no later than 15 calendar days after the effective date of the FCSA. These funds are already available in SAFCA's approved 2022-2023 budget and are necessary to initiate the Study, including preparation of the PMP. In the event more funds are required to develop and finalize the PMP, USACE will provide the NFS's with a written estimate of the amount of funds required from the NFS's, and no later than 15 calendar days after such notification, the NFS's will provide the full amount of such funds to USACE.

Once the FCSA is finalized, a project management plan will be developed and agreed upon by USACE, the Board, DWR, and SAFCA. USACE will conduct and manage the Study.

## **6.0 – AUTHORIZATIONS**

- Consolidated Appropriations Act of 2021 (Public Law 116-260)
- WRDA of 1986 (Section 105(a))
- WRDA of 2020 (Section 209)
- California Water Code Section 8590(e)

## **7.0 – CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

The Board has determined that the proposed action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and thus is not a “project” for purposes of the California Environmental Quality Act (CEQA) Public Resources Code Section 21065; CEQA California Code of Regulations, Title 14, 15378(a)).

## **8.0 – STAFF RECOMMENDATION**

Staff recommends that the Board adopt Resolution 2023-07, in substantially the form provided in Attachment A, which:

### **Finds:**

- That approving the Feasibility Cost Share Agreement, the Local Feasibility Cost Share Agreement, the Certificate of Authority, the Self-Certification of Financial Capability, and the Certification Regarding Lobbying is not a project pursuant to Public Resources Code § 21065 and CEQA Section 15378(a).

### **Approves:**

- The FCSA in substantially the form provided;
- The LFCSA in substantially the form provided;
- The Certificate of Authority in substantially the form provided;
- The Self-Certification of Financial Capability in substantially the form provided;
- The Certification Regarding Lobbying in substantially the form provided.

### **Delegates:**

- The Board President the authority to sign the FCSA and LFCSA;
- The Board Counsel the authority to sign the Certificate of Authority;
- The Executive Officer the authority to sign the Self-Certification of Financial Capability;
- The Board President the authority to sign the Certification Regarding Lobbying.

## **9.0 – ATTACHMENTS**

- A. Resolution 2023-07
- B. FCSA
- C. LFCSA
- D. Certificate of Authority

- E. Self-Certification of Financial Capability
- F. Certification Regarding Lobbying
- G. Project Location Map

**10.0 – REVIEWERS**

Prepared by: Wendy Wang, Senior Engineer

Staff Review: Megan Giglini, Senior Environmental Scientist  
Ruth Darling, Program Manager II  
Michael C. Wright, Chief Engineer  
Chris Lief, Executive Officer

Legal Review: Jit Dua, Board Counsel

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

RESOLUTION NO. 2023-07

AUTHORIZING THE APPROVAL OF THE FEASIBILITY COST SHARE AGREEMENT  
AND LOCAL FEASIBILITY COST SHARE AGREEMENT FOR THE YOLO BYPASS  
COMPREHENSIVE STUDY

**WHEREAS**, the Sacramento District of the U.S. Army Corps of Engineers (USACE) has agreed to enter into a Feasibility Cost Share Agreement (FCSA) with the Central Valley Flood Protection Board (Board) and the Sacramento Area Flood Control Agency (SAFCA) for the Yolo Bypass Comprehensive Study (Study); and

**WHEREAS**, SAFCA has agreed to enter into a Local Feasibility Cost Share Agreement (LFCSA) with the Board for the Study; and

**WHEREAS**, the Study will evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a coordinated and implementable solution for flood risk management and ecosystem restoration in the Yolo Bypass, CA; and

**WHEREAS**, the Department of the Army, represented by the USACE Sacramento District Commander, is the federal sponsor for the Project. The State of California, acting by and through the Board, represented by the Board President, and SAFCA, represented by the Executive Director, are the Non-Federal Sponsors (NFS) for the Project; and

**WHEREAS**, the Section 105(a) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements; and

**WHEREAS**, the Section 209 of the WRDA of 2020, included in Part 2, Division AA of the Consolidated Appropriations Act of 2021 (Pub. L. No. 116-260, Part 2 Div. AA, §209, 134 Stat. 2615, 2681-2682 (2020)), authorizes a comprehensive study of the Sacramento River in the vicinity of the Yolo Bypass System; and

**WHEREAS**, the Study costs are projected to be \$3,000,000, with the USACE share of such costs projected to be \$1,500,000 and the NFS's share of such costs projected to be \$1,500,000, based on a 50/50 percent cost-share; and

**WHEREAS**, of the 50 percent NFS cost-share, the Board costs are projected to be \$750,000 and the SAFCA costs are projected to be \$750,000; and

**WHEREAS**, as part of the annual budget, the US Congress appropriated \$500,000 in the Fiscal Year 2023 Energy and Water Development Appropriations Bill to conduct the Study; and

**WHEREAS**, in 2016, the Yolo Bypass Cache Slough (YBCS) Partnership was formed through a Memorandum of Understanding (MOU) to collaboratively prioritize and resolve barriers to success and collaborate to implement projects that provide benefit the YBCS region; and

**WHEREAS**, the MOU was signed by 15 federal, state and local agencies including the USACE, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. National Marine Fisheries Service, California Natural Resources Agency, Central Valley Flood Protection Board, California Department of Water Resources, California Department of Fish and Wildlife, State Water Resources Control Board, Central Valley Regional Water Quality Control Board, County of Solano, County of Yolo, Reclamation District No. 2068, SAFCA, Solano County Water Agency; and

**WHEREAS**, the WRDA 2020 Section 209 states that the YBCS Partnership should be consulted in conducting the Study; and

**WHEREAS**, Senate Bill (SB) 369, passed in 2021 and codified in California Water Code Section 8512, established the Yolo Bypass Cache Slough Partnership Multibenefit Program (YBCS program) to support the development and implementation of projects within the Yolo Bypass and Cache Slough region. SB 369 endorsed the YBCS Partnership and its role in development and implementation of projects in the YBCS region in order to meet the following objectives: (a) prioritize projects that accommodate multiple objectives in the YBCS region, (b) identify project implementation challenges and work collaboratively to resolve those challenges, (c) develop programmatic and expedited approaches for regulatory compliance, (d) identify funding mechanisms for project implementation and long-term operations and maintenance, and (e) develop strategies to foster regional agricultural sustainability, recreational opportunities, and long-term water supply reliability; and

**WHEREAS**, the Department of Water Resources and the Board are developing the YBCS Master Plan and Program Environmental Impact Report (Program EIR), which are programmatic documents that describe the proposed YBCS program purpose, potential project components and rationale for inclusion, phasing, and measurement of individual and cumulative proposed project impacts and benefits against proposed hydraulic and environmental baselines; and

**WHEREAS**, a YBCS Master Plan will be developed in coordination with the Study to efficiently leverage existing tools and data and ensure consistent findings and recommendations; and

**WHEREAS**, the approval of the FCSA, the LFCSA, the Certificate of Authority, the Self-Certification of Financial Capability, and the Certification Regarding Lobbying is not a project

pursuant to Public Resources Code § 21065 and California Environmental Quality Act (CEQA) Section 15378(a) because the activity does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD:

1. Adopts the findings set forth in the Staff Report.
2. Agrees to enter into a FCSA with the USACE and SAFCA for the Study.
3. Agrees to enter into an LFCSA with SAFCA for the Study.
4. Finds that the approval of the FCSA, the LFCSA, the Certificate of Authority, the Self-Certification of Financial Capability, and the Certification Regarding Lobbying is not a “project” for purposes of the CEQA (Public Resources Code § 21065; CEQA Guidelines § 15378(a)).
5. Delegates the Board President the authority to sign the Certification Regarding Lobbying.
6. Delegates the Executive Officer the authority to sign the Self-Certification of Financial Capability for Agreements.
7. Delegates the Board Counsel the authority to sign the Certification of Authority.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jane Dolan  
President

\_\_\_\_\_  
Mike Villines  
Vice President

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA, CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR THE  
THE COMPREHENSIVE STUDY OF THE SACRAMENTO RIVER, YOLO BYPASS  
SYSTEM, CALIFORNIA

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

WITNESSETH, THAT:

WHEREAS, Section 209 of the Water Resources Development Act of 2020, included in Part 2, Division AA of the Consolidated Appropriations Act of 2021 (Pub. L. No. 116-260, Part 2 Div. AA, §209, 134 Stat. 2615, 2681-2682 (2020)), authorizes a comprehensive study of the Sacramento River in the vicinity of the Yolo Bypass System, California, consisting of a system of weirs, levees, bypass structures, and other water resources development projects in California’s Sacramento River Valley, extending from the Fremont Weir near Woodland, California, to the Sacramento River near Rio Vista, California, authorized pursuant to section 2 of the Act of March 1, 1917 (chapter 144; 39 Stat. 949); and

WHEREAS, Section 105(a) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements; and

WHEREAS, the Non-Federal Sponsors propose to accelerate their provision of funds (hereinafter “accelerated funds”) for the immediate use by the Government for the study; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Study” means the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a

coordinated and implementable solution for comprehensive management of the Sacramento River in the vicinity of the Yolo Bypass System, California for the purposes of flood risk management, ecosystem restoration, water supply, hydropower, and recreation.

B. The term “study costs” means all costs incurred by the Government and Non-Federal Sponsors after the effective date of this Agreement that are directly related to performance of the Study and cost shared in accordance with the terms of this Agreement. The term includes the Government’s costs for preparing the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer Review; and the Non-Federal Sponsors’ creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsors in the Study Coordination Team to discuss significant issues and actions; audits; an Independent External Peer Review panel, if required; or negotiating this Agreement.

C. The term “PMP” means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsors, that specifies the scope, cost, and schedule for Study activities and tasks, including the Non-Federal Sponsors’ in-kind contributions, and that guides the performance of the Study.

D. The term “in-kind contributions” means those planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the Study and that are identified in the PMP and performed or provided by the Non-Federal Sponsors after the effective date of this Agreement and in accordance with the PMP.

E. The term “maximum Federal study cost” means the \$1,500,000 Federal cost limit for the Study, unless the Government has approved a higher amount.

F. The term “fiscal year” means one year beginning on October 1<sup>st</sup> and ending on September 30th of the following year.

G. The term “accelerated funds” means Non-Federal funds out of proportion with Federal funds but within the ultimate non-Federal cash contribution.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using funds appropriated by the Congress and funds provided by the Non-Federal Sponsors. In carrying out their obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued

pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Non-Federal Sponsors shall contribute 50 percent of the study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsors shall provide funds in the amount of \$25,000, for the Government to initiate the Study, including preparation of the PMP. In the event more funds are needed to develop the PMP, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors, and no later than 15 calendar days after such notification, the Non-Federal Sponsors shall provide the full amount of such funds to the Government.

2. As soon as practicable after completion of the PMP, and after considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors to meet their share of study costs for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsors shall provide the full amount of such funds to the Government in accordance with Article III.C.

3. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors during that fiscal year to meet their cost share. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article III.C.

C. The Government shall include in study costs and credit towards the Non-Federal Sponsors' share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurs in providing or performing in-kind contributions, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsors shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsors' share of study costs less the amount of funds provided pursuant to paragraph B.1. of this Article.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors;

for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on contract solicitations prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsors shall not use Federal program funds to meet any of their obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsors shall not be entitled to any credit or reimbursement for costs it incurs in performing their responsibilities under this Agreement.

G. If Independent External Peer Review (IEPR) is required for the Study, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in study costs or the maximum Federal study cost.

H. In addition to the ongoing, regular discussions between the parties regarding Study delivery, the Government and the Non-Federal Sponsors may establish a Study Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Study Coordination Team shall not be included in study costs, but shall be included in calculating the maximum Federal study cost. The Non-Federal Sponsors' costs for participation on the Study Coordination Team shall not be included in study costs and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

I. In addition to providing the funds required by paragraph B. of this Article, the Non-Federal Sponsors may provide accelerated funds for immediate use by the Government. The Non-Federal Sponsors understand that use of accelerated funds shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this Study or to match any accelerated funds provided by the Non-Federal Sponsors; that any accelerated funds will be credited toward the Non-Federal Sponsors' cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsors are not entitled to any repayment for any accelerated funds obligated by the Government even if the Study ultimately is not completed.

## ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, study costs are projected to be \$3,000,000, with the Government's share of such costs projected to be \$1,500,000 and the Non-Federal Sponsors' share of such costs projected to be \$1,500,000, which includes creditable in-kind contributions projected to be \$750,000, and the amount of funds required to meet their cost share projected to be \$750,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Government shall provide the Non-Federal Sponsors with monthly reports setting forth the estimated study costs and the Government's and Non-Federal Sponsors' estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsors funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Study.

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

D. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of study costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' required share of study costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional funds.

E. 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 Sponsors with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds by delivering a check payable to "FAO, USAED, Sacramento District (L2)" to the District Commander, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government. Should the final accounting determine that the Non-Federal Sponsors has provided funds in excess of their required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsors' responsibility to pay their share of study costs, including contract claims or any other liability that may become known after the final accounting.

## ARTICLE IV - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an extension is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

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

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

## ARTICLE 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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsors shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Study. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Study shall not be included in study costs, but shall be included in calculating the maximum Federal study cost.

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

#### ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE VIII - NOTICES

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

If to the Non-Federal Sponsors:

State of California, Central Valley Flood Protection Board  
President, State of California, Central Valley Flood Protection Board  
3310 El Camino Avenue, Suite 170  
Sacramento, CA 95821

Sacramento Area Flood Control Agency  
Executive Director, Sacramento Area Flood Control Agency  
1325 J Street, Suite 1700  
Sacramento, CA 95814

If to the Government:

District Commander  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

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

ARTICLE IX - 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 X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

“ARTICLE XI – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.

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

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA, CENTRAL VALLEY  
FLOOD PROTECTION BOARD

BY: \_\_\_\_\_  
Chad W. Caldwell, P.E.  
Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_  
Jane Dolan  
President, State of California, Central Valley  
Flood Protection Board

DATE:

DATE:

SACRAMENTO AREA FLOOD CONTROL  
AGENCY

BY: \_\_\_\_\_  
Richard M. Johnson  
Executive Director, Sacramento Area  
Flood Control Agency

LOCAL FEASIBILITY COST-SHARING AGREEMENT  
BETWEEN  
THE CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR THE  
THE COMPREHENSIVE STUDY OF THE SACRAMENTO RIVER, YOLO BYPASS,  
CALIFORNIA

This Local Feasibility Cost Sharing Agreement (LFCSA) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the State of California, acting by and through the Central Valley Flood Protection Board (hereinafter the Board), represented by its Board President, and the Sacramento Area Flood Control Agency (hereinafter SAFCA), represented by its Executive Director.

RECITALS:

WHEREAS, the U.S. Army Corps of Engineers (USACE) was authorized in Section 209 of the Consolidated Appropriations Act 2021, Water Resources Development Act 2020, Public Law 116-260 to conduct a comprehensive study of the Yolo Bypass (Study), which is a feature of the Sacramento River Flood Control System in California; and

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

WHEREAS, on \_\_\_\_\_, 2023 the Board and SAFCA executed a Feasibility Cost Sharing Agreement (FCSA) for the Study with the USACE: and

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

WHEREAS, the Board and SAFCA have agreed to the term 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 executed FCSA is attached hereto as Attachment A and incorporated by this reference.
2. Study Sponsor. The Board and SAFCA have agreed to jointly perform the functions of the Study Sponsor as stated in the FCSA.

3. Study Activities. Participation by the Board and SAFCA in the Study is limited to the activities that will be described in the Project Management Plan (PMP).
4. Local Cost Sharing.

A. Contributions.

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

Table 1

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

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

- (2) At such time as the USACE notifies the Board and SAFCA that payments are due under the FCSA, the Board and SAFCA shall each pay or contribute its share by delivering checks payable to "FAO, USAED Sacramento District (L2)" to the District Commander, or verifying to the satisfaction of the USACE that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the USACE, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the USACE. SAFCA and the Board shall each provide notification of payment to the other.
- (3) Each party to this LFCSA shall be obligated only for the percentage shown on Table 1 above unless this LFCSA is amended in writing and signed by each party.
- (4) In the event the Board does not secure any, or all, of the Board's share of the Study costs during the term of this LFCSA, SAFCA may cover the short fall including any In-Kind Service unless SAFCA decides to terminate the LFCSA pursuant to Paragraph 8 herein; and there will be no remaining Board obligation toward SAFCA.

- 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 A(3) shall be credited and returned to the Board and SAFCA in proportion to their respective cash contributions added to their In-Kind Service contributions. It is understood in making such a 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 LFCSA during any dispute.
6. Records and Reports.
  - A. The Board shall coordinate with the USACE in the maintenance of adequate records of 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 inspections and audit by the Board for a period of ten years after final payment under this LFCSA.
  - 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's Feasibility Report within 14 days of receipt of such feasibility report by the Board.
7. Designated Representative. The designated representative by the Board for the administration of this LFCSA shall be the President of the Central Valley Flood Protection Board. The designated representative for SAFCA for this LFCSA shall be the Executive Director. SAFCA shall notify the Board in writing of their representatives for the purposes of this LFCSA.
8. Term of Agreement. The term of the LFCSA shall be co-extensive with the term of the FCSA. For good cause, SAFCA or the Board may exercise their independent rights, under the FCSA, to terminate or suspend the FCSA. "Good

Cause” includes but is not limited to either party’s inability to renegotiate the provisions of this LFCSA 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 SAFCA’s inability to appropriate necessary funding for its share of the Study cost. If the FCSA is terminated, either party may terminate or suspend this LFCSA with 60 days written notice. This LFCSA shall not be effective until approval by the Department of General Services has occurred. Upon termination of this LFCSA, all data and information generated as a part of the Study shall be made available to both parties.

9. Severability Clause. If any provision of this LFCSA is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of the LFCSA be construed to remain fully valid, enforceable, and binding on the parties.
10. Notice. Any notice or other communication required under this LFCSA shall be in writing and shall be delivered in person to the other party or deposited in the United States mail, postage prepaid, addressed to the other party at the following addresses:  
  

Jane Dolan, President Central Valley Flood Protection Board 3310 El Camino Avenue, Room 170 Sacramento, CA 95821	(916) 574-0609
Richard Johnson, Executive Director Sacramento Area Flood Control Agency 1325 J Street, Suite 1700 Sacramento, CA 95814	(916) 874-7606
11. Successors and Assigns. This LFCSA 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 the future appropriations by the Legislature of the State of California.
13. Independent Contractor. SAFCA, and its agents and employees, in the performance of this LFCSA, shall act in an independent capacity and not as officers or employees of the State.
14. Non-Discrimination Clause. During the performance of this LFCSA, SAFCA and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and

AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. SAFCA and its subcontractors shall insure 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 3 of the California Code of Regulations, are incorporated into this LFCSA 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 collective bargaining or other Agreement.

SAFCA shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this LFCSA.

15. Child Support Compliance Act. For any Agreement in excess of \$100,000, 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 LFCSA shall not be effective until approval by the Department of general Services has occurred.

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

CENTRAL VALLEY FLOOD PROTECTION  
BOARD  
STATE OF CALIFORNIA

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

By: \_\_\_\_\_  
Jane Dolan  
President

By: \_\_\_\_\_  
Kanwarjit Dua  
Counsel

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

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

SACRAMENTO AREA FLOOD  
CONTROL AGENCY

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

By: \_\_\_\_\_  
Richard M. Johnson  
Executive Director

By: \_\_\_\_\_  
Jeremy Goldberg  
Agency Counsel

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

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

**CERTIFICATE OF AUTHORITY**

I, Kanwarjit Dua, do hereby certify that I am the principal legal officer for the State of California Central Valley Flood Protection Board, that the Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency in connection with the **Yolo Bypass Comprehensive Study**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the Central Valley Flood Protection Board acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification  
this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
**Kanwarjit Dua**  
**Board Counsel**  
**State of California Central Valley Flood Protection Board**

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

I, Chris Lief, do hereby certify that I am the Executive Officer of the State of California Central Valley Flood Protection Board (CVFPB) (the “Non-Federal Sponsor”); that I am aware of the financial obligations of the Non-Federal Sponsor for the Yolo Bypass Comprehensive Study; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor’s obligations under the Agreement between the US Army Corps of Engineers, the CVFPB, and the Sacramento Area Flood Control Agency (SAFCA) for the Project.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

BY: \_\_\_\_\_  
Chris Lief  
Executive Officer, State of California  
Central Valley Flood Protection Board

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of 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.

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Jane Dolan  
President  
Central Valley Flood Protection Board

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