

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
CONSTRUCTION OF THE
AMERICAN RIVER WATERSHED, CALIFORNIA
(FOLSOM DAM MODIFICATIONS)

THIS AGREEMENT is entered into this 30th day of March, 2004, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government" or "Department of the Army"), represented by the U.S. Army Engineer, Sacramento District, and The State of California (hereinafter the "State"), represented by the President of The Reclamation Board, and the Sacramento Area Flood Control Agency (hereinafter "SAFCA") represented by its Executive Director (the State and SAFCA when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, was authorized by Section 101(a)(6) of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, Folsom Dam is a unit of the Central Valley Project and is under the administrative jurisdiction of the United States Bureau of Reclamation (hereinafter the "Bureau") pursuant to Federal reclamation law;

WHEREAS, Folsom Dam shall remain under the administrative jurisdiction of the Bureau both during the construction and after the completion of the Folsom Dam Modifications;

WHEREAS, the Government, State and SAFCA desire to enter into a Project Cooperation Agreement for construction of the American River Watershed, California (Folsom Dam Modifications) (hereinafter the "Project", as defined in Article I.A. of this Agreement), wherein the State shall be responsible for cost sharing of the Project during construction, as well as the provision of lands, easements, and rights-of-way, and SAFCA shall be responsible for operation, maintenance, repair, replacement and rehabilitation of the completed Project;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the State does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

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

WHEREAS, SAFCA has the full authority and capability to perform operation, maintenance, repair, replacement and rehabilitation of the completed Project, as set forth in this Agreement.

NOW, THEREFORE, the Government, State and SAFCA agree as follows:

ARTICLE I-DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the following: (1) enlarging the eight existing river outlets to Folsom Dam to increase the dam's effectiveness in controlling floods; and (2) constructing features to increase the flood control capability of the dam and reservoir with the exception of the surcharge component, as generally described in the American River Watershed, California, Folsom Dam Modifications, Limited Reevaluation Report, dated November 2003 and approved by Assistant Secretary of the Army (Civil Works) on 23 January 2004.

B. The term "total project costs" shall mean all costs incurred by the State and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto;

supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights of way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights of way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the State's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the State and SAFCA in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Sacramento District (hereinafter the "District Engineer") notifies the State and SAFCA in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for commencement of operation and maintenance in advance of completion of the entire Project. For a portion of the Project to be suitable for commencement of operation and maintenance, the District Engineer must notify the State and SAFCA in writing of the Government's determination that the portion of the Project is complete and

can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the State, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the State the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the State has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the State the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the State with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the State 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 State, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the State and SAFCA with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, total project costs would exceed \$199,100,000, the Government and the State agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the State agree to proceed with further contract awards for the Project, but in no event shall the award of

contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the State, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The State may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the State in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The State shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the State, SAFCA, and the Bureau in writing and furnish the State, SAFCA, and the Bureau with a copy of the Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, SAFCA shall pay the Bureau that portion of the OMRR&R costs for Folsom Dam attributed to the completed Project, as defined in Article I.A. of this Agreement, or the functional portion of the Project, in accordance with the AGREEMENT BETWEEN THE UNITED STATES AND THE SACRAMENTO AREA FLOOD CONTROL AGENCY PROVIDING FOR OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION OF FOLSOM DAM MODIFICATIONS AND ASSOCIATED FUNDING, dated 23 December 2003.

D. The State shall contribute a minimum of 35 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The State shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the State shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the State must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the State's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 35 percent of total project costs, the State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the State's total contribution equal to 35 percent of total project costs.

4. If the Government determines that the value of the State's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the State for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the State.

E. State may request the Government to provide lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the State. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the State in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The State shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, SAFCA shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the State in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the State has met its obligations under paragraphs B., D., and E. of this Article.

G. The State shall not use Federal funds to meet the State's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. SAFCA agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. Not less than once each year, SAFCA shall inform affected interests of the extent of protection afforded by the Project.

J. SAFCA shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise development in the floodplain and in adopting such regulations to prevent unwise future development and to ensure compatibility provided by the Project.

comply with Section 402 of the Water Resources Development (33 U.S.C. 701b-12), which requires a non-Federal interest to one year after the date of signing this Agreement, a floodplain plan shall be designed to reduce the impacts of future flood damage including but not limited to, addressing those measures to be taken to preserve the level of flood protection provided by Section 402, as amended, the non-Federal interest shall terminate one year after completion of construction of the Project and provide an information copy of the plan to the Government upon

**NDS, RELOCATIONS, DISPOSAL AREAS, AND
PUBLIC LAW 91-646 COMPLIANCE**

A. The Government, after consultation with the State, shall determine the lands, easements, and rights of way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the State with general written descriptions, including maps as appropriate, of the lands, easements, and rights of way that the Government determines the State must provide, in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with acquisition of such lands, easements, and rights of way. Prior to the end of the period of construction, the State shall acquire all lands, easements, and rights of way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the State shall provide the Government with authorization for entry to all lands, easements, and rights of way the Government determines the State must provide for that contract. For so long as the Project remains authorized, the State shall ensure that lands, easements, and rights of way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the State are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the State, shall determine the improvements required on lands, easements, and rights of way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall

provide the State with general written descriptions of such improvements in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the State shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the State shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the State, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the State with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with such relocations. Prior to the end of the period of construction, the State shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the State shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The State in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the State's share of total project costs.

E. The State shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights of way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The State shall receive credit toward its share of total project costs for the value of the lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas that the State must provide pursuant to Article III of this Agreement, and for the value of the relocations that the State must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the State shall not receive credit for the value of any lands, easements, rights of way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The State also shall not receive credit for the value of lands, easements, rights of way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights of way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights of way owned by the State on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the State provide the Government with authorization for entry thereto. The fair market value of lands, easements, or rights of way acquired by the State after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights of way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The State shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the State and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the State's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the State's appraisal, the State may obtain a second appraisal, and the fair market value shall be the amount set forth in the State's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the State's second appraisal, or the State chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the

amount set forth in the Government's appraisal, if such appraisal is approved by the State. In the event the State does not approve the Government's appraisal, the Government, after consultation with the State, shall consider the Government's and the State's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the State for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the State, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the State, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the State, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights of way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the State shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the State shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the State shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the State agree as to an appropriate amount, then the State shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the State cannot agree as to an appropriate amount, then the State may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights of way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the

construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights of way acquired by the State within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the State, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. Any credit afforded for the value of relocations performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 2761 *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with its obligations under these laws.

D. The value of the improvements made to lands, easements, and rights of way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V -PROJECT COORDINATION TEAM

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

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

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 [revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)] for relocations; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project,

has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the State with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the State's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share of the total project costs actually incurred to date, and of the funds the Government projects to be required from the State for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$199,100,000 and the State's contribution required under Article II.D. of this Agreement is projected to be \$69,685,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the State, nor the Non-Federal Sponsors collectively.

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B. The State shall provide the cash contribution required under Articles II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the State in writing of such scheduled date and the funds the Government determines to be required from the State to meet the non-Federal proportionate share of projected financial obligations for construction through the first quarter of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the State shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent quarters of construction, the Government shall notify the State in writing, no later than 60 calendar days prior to the beginning of that quarter, of the funds the Government determines to be required from the State to meet the non-Federal proportionate share of projected financial obligations for construction for that quarter. No later than 30 calendar days prior to the beginning of the quarter, the State shall

make the full amount of the required funds for that quarter available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the State to cover the non-Federal proportionate share of projected financial obligations for construction for the current quarter, the Government shall notify the State in writing of the additional funds required, and the State, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the State shall provide the Government with the full amount of the funds required to pay for such additional work on a quarterly basis by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the State must provide additional funds to meet its cash contribution, the Government shall notify the State in writing of the additional funds required. Within 30 calendar days thereafter, the State shall provide the Government with a check for the full amount of the additional required funds for that quarter.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the State with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the State's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the State is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the State shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the State's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, Sacramento" to the District

Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the State exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the State no later than 90 calendar days after the final accounting is complete; however, the State shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the State, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII -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. The parties shall each 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 VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, SAFCA shall pay the Bureau that portion of the OMRR&R costs for Folsom Dam attributed to the completed Project, as defined in Article I.A. of this Agreement, or the functional portion of the Project. Such payment shall be in accordance with the AGREEMENT BETWEEN THE UNITED STATES AND THE SACRAMENTO AREA FLOOD CONTROL AGENCY PROVIDING FOR OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION OF FOLSOM DAM MODIFICATIONS AND ASSOCIATED FUNDING, dated 23 December 2003.

B. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors own or control for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project.

ARTICLE IX -INDEMNIFICATION

The State shall hold and save the Government free from all damages arising from the construction of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors. SAFCA shall hold and save the Government free from all damages arising from operation, maintenance, repair, replacement, and rehabilitation of the Project except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X -MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the State shall develop procedures for keeping books, records, documents, and 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 State shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, all such records shall be subject to mutual examination and audit.

B. Pursuant to 32 C.F.R. Section 33.26, the State is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the State and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the State and independent auditors any information necessary to enable an audit of the State's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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

ARTICLE XI -FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and the Government agree to 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, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 [revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)].

ARTICLE XII -RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors all act in an independent capacity, and none 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 such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII -OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV -TERMINATION OR SUSPENSION

A. If at any time the State fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the State elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XIV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the State 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 XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the State shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the State determine to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA, 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights of way that the Government determines, pursuant to Article III of this Agreement, to be provided by the State for the construction, operation, and maintenance of the Project. For lands under the administrative jurisdiction of the Bureau that are required to implement the Project, the Government shall coordinate with the Bureau for the performance of any such investigations. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the State with prior specific written direction, in which case the State shall perform such investigations in accordance with such written direction. All actual costs incurred by the State for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights of way that the Government determines, pursuant to Article III of this Agreement, to be provided by the State for the construction, operation, and maintenance of the Project, the State and the Government shall provide prompt written notice to each other, and the State shall not proceed with the acquisition of the real property interests until both parties agree that the State should proceed.

C. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights of way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction after considering any liability that may arise under CERCLA, SAFCA shall be responsible, as between the Department of the Army and the Non-Federal Sponsors, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination for lands provided by the State. The responsibility for costs of clean-up and response located on lands under the administrative jurisdiction of the Bureau shall be determined in accordance with the provisions of CERCLA. Such costs shall not be considered a part of total project costs. In the event SAFCA fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsors and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. Following notification in accordance with Article II.C. of this Agreement, as between the Department of the Army and the Non-Federal Sponsors, SAFCA shall be considered the operator of the Project or a functional portion of the Project for purposes of CERCLA liability.

ARTICLE XVI -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 either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the State:

The Reclamation Board
P. O. Box 942836
Sacramento, California 94236-0001

If to SAFCA:

Sacramento Area Flood Control Agency
1007 - 7th Street, 5th Floor
Sacramento, California 95814

If to the Government:

U.S. Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, California 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 XVII -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 XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 [16 U.S.C. Section 469c(a)], the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one-percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 [16 U.S.C. Section 469c-2(3)]. Any costs of mitigation and data recovery that exceed the one-percent limit shall not be included in total project costs, but shall be cost shared between the State and the Government consistent with the minimum non-Federal cost-sharing requirements for the underlying flood control purpose as follows: 35 percent borne by the State, and 65 percent borne by the Government.

ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsors have reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the State, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$207,735,000 as calculated in accordance with ER 1105-2-100 using October 1, 2003 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XX -OBLIGATIONS OF FUTURE APPROPRIATIONS

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

B. The Non-Federal Sponsors intend to satisfy their obligations under this Agreement. The Non-Federal Sponsors shall include in their budget requests or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsors' obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill their obligations hereunder. The Non-Federal Sponsors reasonably believe that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsors shall use their best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to satisfy their obligations hereunder, 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 Assistant Secretary of the Army (Civil Works), District Engineer.

DEPARTMENT OF THE ARMY

THE RECLAMATION BOARD OF
THE STATE OF CALIFORNIA

BY: _____
John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

BY: Betsy A. Marchand
Betsy A. Marchand
President

DATE: _____

DATE: 3/10/04

BY: Michael J. Conrad, Jr.
Michael J. Conrad, Jr.
Colonel, Corps of Engineers
District Engineer

SACRAMENTO AREA FLOOD
CONTROL AGENCY

BY: F.I. Hodgkins
F.I. Hodgkins
Executive Director

DATE: 30 Mar 04DATE: 3-5-04

CERTIFICATE OF AUTHORITY

I, Scott R. Morgan, do hereby certify that I am the principal legal officer of The Reclamation Board, that The Reclamation 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 Reclamation Board in connection with the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of The Reclamation Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

29th day of January, 2004.

Scott R. Morgan
Scott R. Morgan
Counsel for The Reclamation Board

CERTIFICATE OF AUTHORITY

I, Tim Washburn, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Sacramento Area Flood Control Agency in connection with the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

5th day of March, 2004.



Tim Washburn
Counsel for SAFCA

CERTIFICATION REGARDING LOBBYING

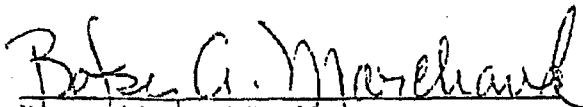
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 Section 1352, Title 31, U.S. Code. 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.



Betsy A. Marchand, President
The Reclamation Board of the State of California

DATE: 3/10/04

CERTIFICATION REGARDING LOBBYING

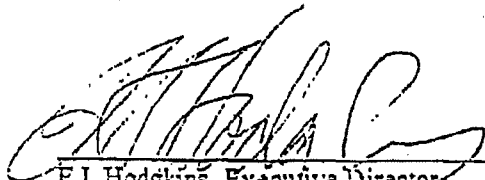
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 Section 1352, Title 31, U.S. Code. 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.



F.I. Hodgkins, Executive Director
Sacramento Area Flood Control Agency

DATE: 3-5-04

BUDGET DETAIL AND PAYMENT PROVISIONS

- I. **INVOICING AND PAYMENT:** Method of payment shall be in accordance with provisions stated in Article VI on page 13 of this Agreement.
- II. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

**EXHIBIT C--Special Terms and Conditions for
Department Of Water Resources
(Department of the Army Corps of Engineers)**

1. **AVAILABILITY OF FUNDS:** Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
2. **AUDIT CLAUSE:** For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract (Government Code Section 8546.7).
3. **CONFLICT OF INTEREST:**
 - a. **Current and Former State Employees:** Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) **Current State Employees:** (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) **Former State Employees:** (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
 - b. **Penalty for Violation:**
 - (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)
 - c. **Members of Boards and Commissions:**
 - (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition for Consulting Services Contracts:

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