STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 09/01)

AGREEMENT NUMBER
4600003060

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

STATE AGENCY'S NAME
Department of Water Resources

CONTRACTOR'S NAME
Department of the Army

2. The term of this Agreement is: Upon signature by the Corps through Upon notice of completion

3. The maximum amount of this Agreement is: $ 28,223,000
Twenty eight million and Two hundred and twenty three thousand dollars and no cents.

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Project Cooperation Agreement Between The Department of the Army and The Reclamation Board and Lower Tule River Irrigation District.	32 pages
Exhibit B – Contract Between the United States of America and Lower Tule River Irrigation District, Porterville Irrigation District, Vandalia Irrigation District, and Pioneer Water Company	11 pages
Exhibit C – Budget Detail and Payment Provisions	1 page
Exhibit D – Special Terms and Conditions for Department of Water Resources (Department of the Army Corps of Engineers)	2 pages

Signatures appear on page 29 of 32 of the Agreement.

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

CONTRACTOR

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

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General Services Use Only

APPROVED
JUN 16 2003
DEPT OF GENERAL SERVICES

PROJECT COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND STATE OF CALIFORNIA, THE RECLAMATION BOARD AND LOWER TULE RIVER IRRIGATION DISTRICT FOR IMPROVEMENTS TO THE SUCCESS DAM, TULE RIVER, CALIFORNIA, FOR FLOOD CONTROL, AGRICULTURAL WATER SUPPLY STORAGE, AND DAM SAFETY ASSURANCE

THIS AGREEMENT is entered into this 20th day of JUNE, 2003 by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U. S. Army Engineer, Sacramento District, and the STATE OF CALIFORNIA acting by and through THE RECLAMATION BOARD (hereinafter the "State"), and the Lower Tule River Irrigation District (hereinafter "LTRID") represented by its President (the State and LTRID are hereinafter collectively referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the Government, the State, and Tule River Association executed an agreement, entitled "Design Agreement Between The Department Of The Army And Tule River Association And State Of California For Design Of The Tule River, Lake Success Enlargement Project" (hereinafter "Design Agreement") and dated January 18, 2001 for the design of the Project;

WHEREAS, the construction of Success Dam and Lake on the Tule River for flood control in the San Joaquin Valley, California, was authorized and completed pursuant to the Flood Control Act of 1944, Public Law 78-534;

WHEREAS, the raising of the spillway at Success Dam, and related improvements, identified as the Success Dam, Tule River, California, Project for flood damage reduction, agricultural water supply storage, and dam safety assurance were authorized by Section 101(b)(4) of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the Success Dam, Tule River, California, Project for flood damage reduction, agricultural water supply storage, and dam safety assurance (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, the Tule River Association acted as the Non-Federal Sponsor for agricultural water supply storage in the Design Agreement;

WHEREAS, LTRID has agreed to succeed the Tule River Association in becoming the Non-Federal Sponsor for agricultural water supply storage;

WHEREAS, Sections 103 and 1203 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 1203(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies that the Secretary of Interior shall recover the non-Federal share of the dam safety assurance costs allocated to irrigation in accordance with repayment provisions of Public Law 98-404;

WHEREAS, LTRID and other non-Federal entities will enter into an agreement with the Department of the Interior to pay the non-Federal share of the dam safety assurance costs;

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 Non-Federal Sponsors do 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, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Success Dam, Tule River, California, Project and sets forth procedures for adjusting such maximum amount; and

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

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

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the flood control, agricultural water supply storage, and dam safety assurance features consisting of raising of the Lake Success gross pool elevation ten feet with a spillway modification (consisting of raising and widening the existing spillway by the construction of an ogee spillway); floodproofing existing recreation facilities; providing replacement parking and extending and widening one of three boat launching ramps; and development of approximately 900 acres of off-site mitigation, as generally described in the Tule River Basin Feasibility Report, dated September, 1999 and the South Pacific Division Commander's Public Notice dated September 30, 1999 and approved by the Report of the Chief of Engineers dated December 23, 1999.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsors 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; the value of the non-Federal interests' contributions under the terms of the Design Agreement; 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 cleanup and response for hazardous substances not regulated under CERCLA; costs of historic preservation activities in accordance with Articles XVIII.A., XVIII.B., XVIII.C., XVIII.E.2., and XVIII.E.3. 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 Non-Federal Sponsors total cash contribution required in accordance with Articles II.E.1.,II.E.3., and II.F.2. 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 tender to the Non-Federal Sponsors to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors 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.

K. The term "State" shall mean the non-Federal sponsor for flood control.

L. The term "Lower Tule River Irrigation District or LTRID" shall mean the non-Federal sponsor for agricultural water supply storage and dam safety assurance.

M. The term "total project flood control costs" shall mean that portion of the total project costs allocated by the Government to flood control. Total project flood control costs are estimated to be 87.50 percent of total project costs.

N. The term "total project agricultural water supply storage costs" shall mean that portion of the total project costs allocated by the Government to agricultural water supply storage. Total project agricultural water supply storage costs are estimated to be 6.55 percent of total project costs.

O. The term "total project dam safety assurance costs" shall mean that portion of the total project costs allocated by the Government to dam safety assurance. Total project dam safety assurance costs are estimated to be 5.95 percent of total project costs.

P. The term "costs for cleanup and response for hazardous substances not regulated under CERCLA" shall mean costs for necessary special handling or remediation of wastes, pollutants and other contaminants which are not regulated under CERCLA which will be treated as total project flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable if the requirement is the result of a validly promulgated Federal, state or local regulation pursuant to paragraph 6(c) of ER 1165-2-132 (26 June 92).

Q. The term "perimeter lands" shall mean all lands, easements, and right-of-way that are determined by the Government pursuant to Article III of this Agreement to be required for the construction, operation or maintenance of the Project, that are provided by the Non-Federal Sponsors, and that are adjacent to the existing Lake Success reservoir except for lands, easements, or rights-of-way required for mitigation that are described in Article VIII.E. of this Agreement and those required for borrow/disposal areas.

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 Non-Federal Sponsors, 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 Non-Federal Sponsors 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 Non-Federal Sponsors have confirmed in writing their willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, 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 Non-Federal Sponsors 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, the total project costs would exceed $25,135,000 (2002 price level), the Government and the Non-Federal Sponsors agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsors 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 Non-Federal Sponsors, 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 or LTRID, or the Non-Federal Sponsors jointly, 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 Non-Federal Sponsors, as applicable, in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors, as applicable, requesting the betterment 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 Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with an 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, the LTRID shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Government shall assign all costs to be included in total project costs and all contributions provided by the Non-Federal Sponsors to total project flood control costs, to total project agricultural water supply storage costs, or to total project dam safety assurance costs.

E. The State shall contribute a minimum of 35 percent, but not to exceed 50 percent, of total project flood control costs in accordance with the provisions of this paragraph. The State shall not be responsible for total project agricultural water storage costs or total project dam safety assurance costs.

1. The State shall provide a cash contribution equal to 5 percent of total project flood control costs in accordance with Article VI.B. of this Agreement less the value of the non-Federal interests' contribution under the terms of the Design Agreement assigned to flood control and subject to the limitations set forth therein.

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 that the Non-Federal Sponsors must provide for the construction, operation, and maintenance of the flood control portion 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 flood control portion of the Project.

3. If the Government projects that the value of the State's contributions under paragraphs E.1.and E.2. of this Article and Articles V, X, and XV.A. of this Agreement assigned to flood control and the value of the non-Federal interests' contributions under the terms of the Design Agreement assigned to flood control will be less than 35 percent of total project flood control 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 flood control costs.

4. If the Government determines that the value of the State's contributions provided under paragraphs E.2. and E.3. of this Article and Articles V, X, and XV.A. of this Agreement assigned to flood control and the value of the non-Federal interests' contributions under the terms of the Design Agreement assigned to flood control have exceeded 45 percent of total project flood control 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 flood control costs. After such a determination, the Government, in its sole discretion, may provide any remaining flood control lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining flood control relocations on behalf of the State.

F. LTRID shall contribute 35 percent of total project agricultural water supply storage costs in accordance with the provisions of this paragraph.

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

2. If the Government projects that the value of LTRID's contributions under paragraph F.1. of this Article and Articles V, X, and XV.A. of this Agreement assigned to agricultural water supply storage and the value of the non-Federal interests' contributions under the terms of the Design Agreement assigned to agricultural water supply storage will be less than 35 percent of total project agricultural water supply storage costs, LTRID shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make LTRID's total contribution equal to 35 percent of total project agricultural water supply storage costs.

3. If the Government determines that the value of LTRID's contributions provided under paragraphs F.1. and F.2. of this Article and Articles V, X, and XV.A. of this Agreement assigned to agricultural water supply storage and the value of the non-Federal interests' contributions under the terms of the Design Agreement assigned to agricultural water supply storage have exceeded 35 percent of total project agricultural water supply storage costs, the Government, subject to the availability of funds, shall reimburse LTRID for any such value in excess of 35 percent of total project agricultural water supply storage costs. After such a determination, the Government, in its sole discretion, may provide any remaining agricultural water supply storage lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining agricultural water supply storage relocations on behalf of LTRID.

G. LTRID shall contribute to the Department of Interior, Bureau of Reclamation, 1.425 percent of total dam safety assurance costs, less the value of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas afforded by the Government in accordance with Article IV of this Agreement, pursuant to Section 1203(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and as described in the *Contract between the United States of America and Lower Tule River Irrigation District, Porterville Irrigation District, Vandalia Irrigation District, and Pioneer Water Company Providing for the Repayment of Funds Expended* *for Federally Performed Safety of Dams Act, Spillway Widening Modification* which is attached as Exhibit B. In accordance with Article III of this Agreement, LTRID shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines that LTRID must provide for the construction, operation, and maintenance of the dam safety assurance portion 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 dam safety assurance portion of the Project.

H. The Non-Federal Sponsors 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 Non-Federal Sponsors. 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 Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors 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, the Non-Federal Sponsors 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.

I. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsors in accordance with paragraphs B., E., F., G., and H. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsors have met their obligations under paragraphs B., E., F., G., and H. of this Article.

J. Notwithstanding any other language in this Agreement, the Government shall conduct reviews of audits conducted by the Non-Federal Sponsors for the purpose of deriving intermediate levels of excess funds for reimbursement to the Non-Federal Sponsors. The Government following the end of the fiscal year shall complete the reviews of such audits. Such reimbursement of excess funds under the first sentence of this paragraph shall be made, subject to availability of funds for that purpose, no later than 90 days after completion of the annual audits. However, the term "excess funds" when used in this paragraph shall not mean funds that are required to remain obligated or where the refund of such funds would impact on awarded contracts or otherwise affect the Project schedule.

K. The Non-Federal Sponsors shall not use Federal program funds to meet their obligations for the Project under this Agreement unless the Federal agency providing the Federal program funds verifies in writing that the expenditure of such funds is expressly authorized by statute.

L. The Non-Federal Sponsors agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

M. Not less than once each year, the Non-Federal Sponsors shall inform affected interests regarding the limitations of the protection afforded by the Project.

N. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the floodplain and in adopting such regulations as may be necessary to ensure compatibility between future development and protection levels provided by the Project.

O. The Non-Federal Sponsors shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 USC 701b-12), which requires a non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the Non-Federal Sponsors shall implement such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsors shall provide an information copy of the plan to the Government upon its preparation.

P. The Non-Federal Sponsors shall prescribe and enforce regulations to prevent obstructions of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

ARTICLE III -LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsors, 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 Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsors 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 Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, 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 Non-Federal Sponsors with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsors 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 Non-Federal Sponsors, 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 Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors share of total project flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable.

E. The Non-Federal Sponsors 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 CFR 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.

F. At the Non-Federal Sponsors' request made concurrently with or subsequent to the request of the Non-Federal Sponsors pursuant to Article VIII.C. of this Agreement, the Government shall accept the transfer of title to perimeter lands from the Non-Federal Sponsors for flood control and agricultural water supply storage after acquisition of such lands by the Non-Federal Sponsors. Subject to approval by the United States in accordance with existing laws, regulations, and standards at the time of transfer of title to the Government, the Government shall accept such transfer of title to perimeter lands subject to the right of reversion to the applicable party, as between the State and LTRID, that conveyed such land to the United States in the event that the Government determines in writing that such land is no longer needed for the purposes of flood control or agricultural water supply storage.

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

A. The State shall receive credit toward its share of the project costs allocated to flood control 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 for flood control, 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 for flood control. LTRID shall receive credit toward its share of total project agricultural water supply storage costs or total dam safety assurance costs, as applicable, for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that LTRID must provide pursuant to Article III of this

Agreement for agricultural water supply storage and dam safety assurance, and for the value of the relocations that LTRID must perform or for which it must ensure performance pursuant to Article III of this Agreement for agricultural water supply storage and dam safety assurance. However, the Non-Federal Sponsors 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 Non-Federal Sponsors 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 or performed using Federal program funds unless the Federal agency providing the Federal program funds 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 Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors 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 Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors 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 Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, or the Non-Federal Sponsors choose 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 Non-Federal

Sponsors. In the event the Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' 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 Non-Federal Sponsors 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 Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, 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 Non-Federal Sponsors, 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors 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 Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors, 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. Crediting for 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 the Davis-Bacon Act (40 USC 276a, et seq.), the Contract Work Hours and Safety Standards Act (40 USC 327, et seq.) and the

Copeland Anti-Kickback Act (40 USC 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 counterparts named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' counterparts 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 the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act 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 flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable, 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 Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of total project costs, of total project flood control costs, of total project agricultural water supply storage costs, of total project dam safety assurance costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsors' total cash contributions required in accordance with Articles II.B., II.E., II.F., II.G., and II.H. 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 Non-Federal Sponsors for the upcoming fiscal year by quarter. On the effective date of this Agreement, total project costs are projected to be $25,135,000 (2002 price levels), total project flood control costs are projected to be $21,995,000, total project agricultural water supply storage costs are projected to be $1,645,000, and total project dam safety assurance costs are projected to be $1,495,000. The State's total contribution for flood control required under Article II.E. of this Agreement is projected to be $7,698,250, LTRID's total contribution for agricultural water supply storage required under Article II.F. of this Agreement is projected to be $575,750, and LTRID's total contribution for dam safety assurance required under Article II.G. of this Agreement is projected to be $21,300 including cash contributions made under the Design Agreement. 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 Non-Federal Sponsors.

B. The Non-Federal Sponsors shall provide the cash contribution required under Articles II.E.1., II.E.3., and II.F.2. of this Agreement in accordance with the provisions of this paragraph and in accordance with the provisions of Exhibit C, Budget Detail and Payment Provisions, attached hereto and made a part of this Agreement.

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 Non-

Federal Sponsors in writing of such scheduled date and the funds the Government determines, after consideration of the funds the Non-Federal Sponsors contributed under the Design Agreement, to be required from the Non-Federal Sponsors to meet the Non-Federal proportionate share of projected financial obligations for construction through the first quarter, 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 Non-Federal Sponsors 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 verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsor 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 Non-Federal Sponsors to cover the Non-Federal proportionate share of projected financial obligations for construction for the current quarter, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required together with an explanation of why additional funds are required, and the Non-Federal Sponsors, 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.H. of this Agreement, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to pay for such additional work on a quarterly basis through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the Non-Federal Sponsors 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 Non-Federal Sponsors must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required together with an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsors shall provide the Government with the full amount of the additional required funds for that quarter through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

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 Non-Federal Sponsors with the results of the final accounting. The final accounting shall determine total project costs, total project flood control costs, total project agricultural water supply storage costs, total project dam safety assurance 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 Non-Federal Sponsors' 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 Non-Federal Sponsors is less than its required share of total project flood control costs plus total project agricultural water supply storage costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsors 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 Non-Federal Sponsors' required share of total project flood control costs plus total project agricultural water supply storage 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 District" 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 Non-Federal Sponsors exceeds their required share of total project flood control costs plus total project agricultural water supply storage 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 Non-Federal Sponsors 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 Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

E. On or before 1 July of the fiscal year prior to any fiscal year during which the Government will be carrying out operation, maintenance, repair, replacement and rehabilitation responsibilities as described in Article VIII.C. of this Agreement, the

Government shall notify the Non-Federal Sponsors in writing of the funds which the Government determines to be required from the Non-Federal Sponsors to cover the costs of such responsibilities. On or before 1 September of the fiscal year prior to any fiscal year during which the Government will be carrying out the responsibilities as described in Article VIII.C. of this Agreement, the Non-Federal Sponsors shall verify to the satisfaction of the Government that the Non-Federal Sponsors have deposited the required funds in a Success Dam and Success Lake enlargement project escrow account acceptable to the Government. The Government shall expend monies from this Success Dam and Success Lake Enlargement Project escrow account for costs required to operate, maintain, repair, replace and rehabilitate the Project.

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, LTRID shall operate, maintain, repair, replace, and rehabilitate the entire Project or a functional portion of the entire Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto. Except when notice is given to the Government, pursuant to paragraph C. of this Article, requesting that the Government undertake such responsibilities, nothing in this Agreement shall obligate the Government to operate, maintain, repair, replace, or rehabilitate the Project. Nothing in this Agreement, including the specific itemization of costs set forth in paragraph D. of this Article, shall interfere with the Government's authority to provide assistance to the Non-Federal Sponsors pursuant to the terms of Public Law 84-99 and its implementing regulations or pursuant to other applicable Federal laws or regulations. In the event OMRR&R of the Project pursuant to the OMRR&R Manual would adversely affect any Federal endangered or threatened species or result in the destruction or adverse modification of critical habitat, at the request of the Non-Federal Sponsors, the District Engineer shall initiate Section 7 consultation and modify the Manual as necessary.

B. The Non-Federal Sponsors hereby gives 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. If an inspection shows that the Non-Federal Sponsors for any reason are failing to perform their obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsors continue to fail to perform, then the Government shall have the 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 completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsors of responsibility to meet the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement. If the Government is operating, maintaining, repairing, replacing and rehabilitating the Project, as set forth in paragraph C. of this Article, the Government, to the extent permitted by law, hereby gives the Non-Federal Sponsors a right to enter, at reasonable times and in a reasonable manner, upon property that the Government owns or controls for access to the Project for the purpose of inspecting the OMRR&R of the Project by the Government.

C. At the request of the Non-Federal Sponsors, the Government shall carry out operation, maintenance, repair, replacement, and rehabilitation of the Project, at the Project site for Project features as set forth in Article VIII.D. of this Agreement. LTRID shall pay 100 percent of the costs incurred by the Government for the operation, maintenance, repair, replacement, and rehabilitation allocated to the entire Project, in accordance with the procedures set forth in Article VI.E. of this Agreement. If the Government is carrying out the aforementioned duties pursuant to the request of the Non-Federal Sponsors, beginning on October 1 of any year, LTRID may resume responsibility for the performance of the aforementioned duties, or may return responsibility for performance of such duties thereafter to the Government, by giving not less than two month written notice thereof to the Government. At any time LTRID has assumed responsibility for the aforementioned duties and expenses, they shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Government owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing or rehabilitating the Project.

D. The costs of OMRR&R for the Project, excluding the off-site mitigation lands, shall include four elements: First, the actual costs to OMRR&R the Project spillway improvements; second, the actual costs to OMRR&R the perimeter lands that are transferred to the Government beginning on the date that title thereto is transferred to the Government; third, the actual costs to OMRR&R on-site mitigation land to be located on existing Lake Success Government land, including the actual costs to perform maintenance inspections and vegetation replacement, if necessary; fourth, the actual costs assigned to recreation. The costs to OMRR&R the Project, excluding the off-site mitigation lands, shall not include any other costs.

E. The foregoing paragraph D. of this Article shall be inapplicable to the mitigation lands purchased for the Project which are located away from the Success Dam and Lake Success. LTRID shall be responsible to operate, maintain, repair, replace and rehabilitate such off-site mitigation lands.

ARTICLE IX -INDEMNIFICATION

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, 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 Non-Federal Sponsors 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 CFR Section 33.20. The Government and the Non-Federal Sponsors 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 CFR Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act of 1984, 31 USC 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 Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' 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 flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable, and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 USC Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are 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 flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable, 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 USC 2000d), Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 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 USC 3141-3148 and 40 USC 3701-3708 (revising, codifying, and enacting without substantive change the provisions of the Davis-Bacon Act [formerly 40 USC 276a, et seq.], the Contract Work Hours and Safety Standards Act [formerly 40 USC 327, et seq.], and the Copeland Anti-Kickback Act [formerly 40 USC 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 each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights 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 Non-Federal Sponsors fail to fulfill their obligations under Article II.B., II.E., II.F., II.G., II.H., VI, or XVIII.E. 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 Non-Federal Sponsors 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 Non-Federal Sponsors elect to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV 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 XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors 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 Non-Federal Sponsors shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determine to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 USC 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 required for the construction, operation, and maintenance of the Project. 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 Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsors for such investigations for hazardous substances shall be included in total project flood control costs, total project agricultural water supply storage costs, or total project dam safety assurance costs, as applicable, 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 required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsors and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsors 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, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of clean-up and response on lands, easements, or rights-of-way provided by the Non-Federal Sponsors for the Project in accordance with Article III of this Agreement, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsors fail 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. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability except during periods when the Government operates, maintains, repairs, replaces, and rehabilitates the Project. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

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 Non-Federal Sponsors:

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

Lower Tule River Irrigation District
P.O. Box 4388
Porterville, California 93258

If to the Government:

US 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 parties 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, assigned to flood control, shall be included in total project flood control costs and cost shared in accordance with the provisions of this Agreement.

B. The costs of identification, survey and evaluation of historic properties, assigned to agricultural water supply storage, shall be included in total project agricultural water supply storage costs and cost shared in accordance with the provisions of this Agreement.

C. The costs of identification, survey and evaluation of historic properties, assigned to dam safety assurance, shall be included in total project dam safety assurance costs and cost shared in accordance with the provisions of this Agreement.

D. As specified in Section 7(a) of Public Law 93-291 (16 USC 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.

E. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one-percent limit specified in paragraph D. 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 USC Section 469c-2(3)).

1. Any costs of mitigation and data recovery assigned to flood control that exceed the one-percent limit shall not be included in total project flood control 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.

2. Any costs of mitigation and data recovery assigned to agricultural water supply storage that exceed the one-percent limit shall be included in total project agricultural water supply storage costs and cost shared in accordance with the provisions of this Agreement.

3. Any costs of mitigation and data recovery assigned to dam safety assurance that exceed the one-percent limit shall be included in total project dam safety assurance costs and cost shared in accordance with the provisions of this Agreement.

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 Success Dam, Tule River, California, project for flood damage reduction, agricultural water supply storage, and dam safety assurance. 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 Non-Federal Sponsors, 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 $28,223,000 as calculated in accordance with ER 1105-2-100 using October 1, 2002 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 Non-Federal Sponsors' legislative bodies where creating such an obligation would be inconsistent with Article XVI, Sections 1 and 18, of the California Constitution.

B. The Non-Federal Sponsors intend to satisfy their obligations under this Agreement. The Non-Federal Sponsors shall include in their budget request 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 District Engineer.

DEPARTMENT OF THE ARMY

BY: ______________________
~~George S. Dunlop~~
~~Deputy Assistant Secretary of the Army (Policy and Legislation)~~
~~Office of the Assistant Secretary of the Army (Civil Works)~~

DATE: ______________________

BY: Mark W. Connelly
Mark W. Connelly
Lieutenant Colonel, Corps of Engineers
Acting District Engineer

DATE: 20 Jun 03

STATE OF CALIFORNIA
THE RECLAMATION BOARD

BY: Anthony J. Caserzo
for Betsy A. Marchand
President
The Reclamation Board

DATE: 5-30-03

LOWER TULE RIVER
IRRIGATION DISTRICT

BY: Ben Serafin
Ben Serafin
President
Lower Tule River Irrigation District

DATE: 5-29-03

CERTIFICATE OF AUTHORITY

I, Scott R. Morgan, do hereby certify that I am the principal legal officer of the State of California, 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 and Lower Tule River Irrigation District in connection with the improvements to the Success Dam, Tule River Basin, California, for Flood Control, Agricultural Water Supply Storage, and Dam Safety Assurance Project, 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 USC 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 28 day of May 20 03.

Scott R. Morgan

Scott R. Morgan
Counsel
The Reclamation Board

CERTIFICATE OF AUTHORITY

I, Daniel Dooley, do hereby certify that I am the principal legal officer of Lower Tule River Irrigation District, that Lower Tule River Irrigation District 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 Reclamation Board, and Lower Tule River Irrigation District in connection with the improvements to the Success Dam, Tule River Basin, California, for Flood Control, Agricultural Water Supply Storage, and Dam Safety Assurance Project, 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 USC Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Lower Tule River Irrigation District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 29th day of May 2003.

for Daniel Dooley
Counsel
Lower Tule River Irrigation District

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.

Anthony J. Cusenza	
FOR Betsy A. Marchand	Ben Serafin
President	President
State of California, The Reclamation Board	Lower Tule River Irrigation District
DATE: 5-30-03	DATE: 5-29-03

Contract No.
03-WC-20-2233

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Success Project, California

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND LOWER TULE RIVER IRRIGATION DISTRICT, PORTERVILLE IRRIGATION DISTRICT, VANDALIA IRRIGATION DISTRICT, AND PIONEER WATER COMPANY PROVIDING FOR THE REPAYMENT OF FUNDS EXPENDED FOR FEDERALLY PERFORMED SAFETY OF DAMS ACT, SPILLWAY WIDENING MODIFICATION

THIS CONTRACT, made this 12th day of March, 2003, in pursuance of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including the Reclamation Safety of Dams Act of November 2, 1978, as amended August 28, 1984, (92 Stat. 2471) and October 27, 2000, (114 Stat. 1441), all collectively hereinafter referred to as the Safety of Dams (SOD) Act and the Water Resources Development Act (WRDA) of 1986, (P.L. 99-662, 100 Stat. 4263, 33 U.S.C. 467n) between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the Lower Tule River Irrigation District, the Porterville Irrigation District, the Vandalia Irrigation District, and the Pioneer Water Company hereafter referred to as Contractors, each duly organized, existing, and acting pursuant to State law, with their principal places of business in California.

EXPLANATORY RECITALS

A. The Corps of Engineers is undertaking a Spillway Widening Modification of the Success Dam. Pursuant to the SOD Act, the U.S. Bureau of Reclamation (Reclamation), as the Contracting Officer, will collect the Contractors' share of the costs associated with this work.

This work shall include, but is not limited to, widening the existing spillway and sill approximately an additional 44 feet and any environmental mitigation costs associated with the spillway modification work.

B. In addition to the SOD Act, this Contract will be executed in accordance with the December 29, 1958, "Memorandum of Agreement between the Department of the Army and the Department of the Interior on Division of Responsibilities in the Central Valley Basin, California."

C. Each Contractor shall pay to the United States its proportionate share of the repayment obligations as follows and pursuant to the attached Exhibit A:

Lower Tule River Irrigation District	Seventy-One and Five-Tenths Percent	71.5%
Porterville Irrigation District	Seventeen Percent	17.0%
Vandalia Irrigation District	Four Percent	4.0%
Pioneer Water Company	Seven and Five-Tenths Percent	7.5%

D. Both WRDA and the SOD Act provides that fifteen percent (15%) of the costs incurred as the result of new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes shall be reimbursed/recovered and allocated to the authorized purposes of the structure.

E. The original construction irrigation storage allocation has been identified in Contract No. 14-06-200-2110A between the United States and the Contractors, and is nine and five-tenths percent (9.5%). This SOD Act Contract will utilize the same irrigation storage allocation. Therefore, 9.5% of the fifteen percent (15%) of the total cost of the Reclamation SOD Act modification for the Success Project Spillway Widening is reimbursable pursuant to this Contract. The Spillway Widening projected cost estimate is one million four hundred and ninety-five thousand dollars ($1,495,000.00).

F. The Contractors agree to repay nine and five-tenths percent (9.5%) of the fifteen percent (15%) of the total actual cost of the Reclamation SOD Act modification for the Success Project Spillway Widening.

DEFINITIONS

1. When used herein, the term:

(a) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized representative acting pursuant to this Contract or applicable Federal and Reclamation Laws or regulations;

(b) "Corps" shall mean the United States Army Corps of Engineers that will be administering the Success Dam Spillway Widening Project modification construction contract;

(c) " Project Cost" shall mean all costs incurred by the United States Government in accordance with the terms of this Contract directly related to construction of the Project. Subject to the provisions of this Contract, the term shall include, but is not necessarily limited to engineering and design costs, construction costs, and project closeout costs. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation;

(d) "Repayment Obligation" shall mean nine and five-tenths percent (9.5%) of the fifteen percent (15%) of the actual costs of the Success Dam Spillway Widening;

(e) "Substantially Complete" shall mean that time when construction of the Success Dam Spillway Widening modifications have physically been completed and accepted by the Corps; and

(f) "Success Dam Spillway Widening Project" (Project) shall mean the widening of the existing Success Dam spillway and sill approximately an additional 44 feet in order to accommodate the maximum probable flood and any associated environmental mitigation.

TERM OF THE CONTRACT

2. This Contract shall become effective on the date first written above, and shall remain in effect until the Contractors have fully repaid to the United States the actual cost described in Article 4(a) associated with the Reclamation SOD Act modification for the Project.

RECLAMATION SAFETY OF DAMS ACT MODIFICATIONS

3. (a) The Project shall include, but is not limited to, widening the existing spillway and sill approximately an additional 44 feet and any environmental mitigation associated with the spillway modification work.

(b) The Contracting Officer will provide the Contractors with a quarterly report covering; construction status, specifications conformance, progress report, and accounting analyses of SOD Act expenditures when such reports and analyses are received from the Corps.

(c) The Contracting Officer will provide the Contractors with a draft Project Cost report for the Project after Project construction is deemed Substantially Complete, and after the draft report is received from the Corps. The Contractors shall have 120 days from receipt of this draft to review and comment. The Contractors shall have access to documentation relating to the Project SOD modifications costs throughout the 120-day period. The Contracting Officer shall issue the final Project cost report and total repayment obligation after consultation among the Contractors, the Corps, and the Contracting Officer.

(d) The Contractors may appeal the Contracting Officer's decision on the final cost report and final total repayment obligation to the Commissioner of Reclamation, who shall make the final administrative agency determination. The Contracting Officer's final cost report, final total repayment obligation, and the annual irrigation repayment schedules shall take effect during the pendency of any appeal. If the Contractors' appeal is successful, any resultant adjustments shall be credited to the annual payments.

REPAYMENT OBLIGATION--TERMS OF REPAYMENT

4. (a) The Contractors shall repay to the United States nine and five-tenths percent (9.5%) of the fifteen percent (15%) of the actual cost incurred by the Corps for the Project SOD Act modification described in Article 3(a) above. The actual cost will include all Project Costs. The Contracting Officer will notify the Contractors in writing the date on which the Project SOD Act modification is deemed "Substantially Complete."

(b) Reclamation's irrigation payment capacity study shows that the Contractors, at this time, do not have the ability to pay for the irrigation allocation. However, the Contractors agree to make payments to repay the irrigation allocation without interest beginning October 1, of the next calendar year after the Project has been deemed to be Substantially Complete and every year thereafter until the Irrigation Allocation have been repaid. Each Contractor shall pay to the United States its proportionate annual amount identified in Exhibit A.

(c) The Contractors reserve the right to prepay all or any portion of the outstanding balance of the Irrigation Allocation at any time without penalty.

TITLE TO REMAIN IN THE UNITED STATES

5. (a) Title to the Success Dam Project facilities shall remain in the name of the United States until otherwise provided by the Congress, notwithstanding the full payment of the Contractors' repayment obligation under this Contract, to the United States.

(b) The rights and obligations created hereby are supplementary to and do not supersede or affect the rights and obligations under any prior contracts between the United States and the Contractors.

CHARGES FOR DELINQUENT PAYMENTS

6. (a) The Contractors shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor(s) shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor(s) shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor(s) shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor(s) shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

7. (a) The obligation of the Contractors to pay the United States as provided in this Contract is a general obligation of the Contractors notwithstanding the manner in which the obligation may be distributed among the Contractors' water users and notwithstanding the default of individual water users in their obligation to the Contractor.

(b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not operate Success Dam for the benefit of the Contractors during any period in which the Contractors are in arrears for more than 12 months in the payment of any construction charges due the United States under this Contract.

CONFIRMATION OF CONTRACT

8. The Contractors, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractors shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractors. This Contract shall not be binding on the United States until such final decree has been secured.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

9. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractors from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

10. No Member of, or Delegate to Congress, Resident Commissioner, or official of the Contractors shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED–SUCCESSORS AND ASSIGNS OBLIGATED

11. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

BOOKS AND RECORDS

12. The Contractors shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other parties' books and records relating to matters covered by this Contract.

DETERMINATIONS

13. The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the expressed and implied provisions of this Contract, the laws of the United States and the State of California and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractors.

NOTICES

14. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or delivered to:

Regional Director
Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

and on behalf of the United States, when mailed, postage prepaid, or delivered to each Contractor:

Lower Tule River Irrigation District
P.O. Box 4388
Porterville, CA 93258-4388

Vandalia Irrigation District
2032 South Hillcrest
Porterville, CA 93257

Porterville Irrigation District
P.O. Box 1248
Porterville, CA 93258-1248

Pioneer Water Company
P.O. Box 4388
Porterville, CA 93258

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

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

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

UNITED STATES OF AMERICA

By: ______________________
Regional Director, Mid-Pacific Region
Bureau of Reclamation

LOWER TULE RIVER IRRIGATION DISTRICT

By: ______________________
President, Board of Directors

(SEAL)

Attest:

____
Secretary of the Board

PORTERVILLE IRRIGATION DISTRICT

By: Guido Lombardi
President, Board of Directors

(SEAL)

Attest:

____
Secretary of the Board

VANDALIA IRRIGATION DISTRICT

By: ______________________
President, Board of Directors

(SEAL)

Attest:

____
Secretary of the Board

PIONEER WATER COMPANY

By: ______________________
Chairman of the Board

(SEAL)

Attest:

____
Secretary of the Board

(I:\contractfinal121902.wpd)

EXHIBIT A
ANNUAL PAYMENT SCHEDULE
FOR SPILLWAY WIDENING MODIFICATION

Lower Tule River Irrigation District	71.5%
Porterville Irrigation District	17.0%
Vandalia Irrigation District	4.0%
Pioneer Water Company	7.5%

The estimated cost for the Project spillway widening modification is one million four hundred and ninety-five thousand dollars ($1,495,000.00) of which the Contractors are collectively responsible for a proportion share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated cost of $1,495,000.00, the Contractors are responsible for repayment of twenty-one thousand three hundred and four dollars ($21,304) ($1,495,000.00 x 15% = $224,250 x 9.5% = $21,304). Therefore, each contractor is responsible for the amounts listed below:

Lower Tule River Irrigation District	$21,304 x 71.5%	=	$15,232.00
Porterville Irrigation District	$21,304 x 17.0%	=	$ 3,622.00
Vandalia Irrigation District	$21,304 x 4.0%	=	$ 852.00
Pioneer Water Company	$21,304 x 7.5%	=	$ 1,598.00
			$21,304.00

<u>Contractors Annual Payments Based on the above Allocated costs:</u>

	Lower Tule River ID	Porterville ID	Vandalia ID	Pioneer WC
October 1, 200__*	$5,077.00	$1,207.00	$284.00	$533.00
October 1, 200__	$5,077.00	$1,207.00	$284.00	$533.00
October 1, 200__	$5,077.00	$1,207.00	$284.00	$533.00
October 1, 200__	**	**	**	**

* The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Substantially Complete. For example: The Project is deemed Substantially Complete on June 2, 2004. First payment will become due and payable on October 1, 2005.

** If the reimbursable cost exceeds $21,304, the Contractors shall continue with the specified annual payments as described above until paid. If the annual payment in any year is less than the payment shown above, the Contractor shall pay that amount in its entirety.

EXHIBIT C–Budget Detail and Payment Provisions

I. INVOICING AND PAYMENT: Method of payment shall be in accordance with provisions stated in Article VI on page 17 of the 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 D–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,OOO, 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 on Contracts for End Product of Contract:

Pursuant to the provisions of Public Contract Code §10365.5, the Contractor and 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 this contract. This prohibition does not apply to contracts pursuant to Government Code Section 4525 et seq., to local assistance or subvention contracts with non-profit entities, or Federal, state and local public entities.