

AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY
AND
THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY
FOR REIMBURSEMENT FOR
STOCKTON METROPOLITAN AREA WATERSHED, CA (URBAN FEATURES)
PROJECT

THIS AGREEMENT is entered into this 2nd day of March, 2002, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander of Sacramento District, and the San Joaquin Area Flood Control Agency (hereinafter "SJAFC") represented by the Executive Director of the San Joaquin Area Flood Control Agency.

WITNESSETH, THAT:

WHEREAS, construction of the Stockton Metropolitan Area Project at Stockton, California, was authorized by Section 211(f)(3) of the Water Resources Development Act of 1996 ("WRDA 96") (Public Law 104-303), and construction was completed March 1999;

WHEREAS, on July 13, 2001, the Government approved the Stockton Metropolitan Area 211 Study Report (hereinafter the "211 Study Report"), that sets forth the basis of reimbursement to SJAFC for the Federal share of the costs to implement flood wall and levee modifications in and around the urban area of the City of Stockton, California;

WHEREAS, Section 211 (f) of WRDA 96 specifically names the Stockton Metropolitan Area project as a project to demonstrate the potential advantages and effectiveness of non-Federal implementation of a flood control project and provides that the Secretary shall enter into an agreement, pursuant to Section 211 of WRDA 96 with the non-Federal interests for development of that flood control project;

WHEREAS, SJAFC initiated construction of its Stockton Metropolitan Area Flood Control Project (hereinafter "Locally Constructed Project" (LCP), as defined in Article I.B. of this Agreement) prior to the Army Corps of Engineers receiving appropriations to initiate study investigation and construction;

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 Non-Federal interest shall not be entitled to reimbursement for work it performs in accordance with Section 211 of Public Law 104-303, until it has entered into a written agreement to furnish its required cooperation for the Project or separable element;

WHEREAS, Section 211 (e)(2)(A) of WRDA 96 further provides that for work (including work associated with studies, planning, design, and construction) carried out by the non-Federal interest with respect to a project described in Section 211(f) the Office of the Assistant Secretary of the Army (Civil Works) (OASA (CW)) shall, subject to the availability of appropriations, reimburse, without interest, the non Federal interest an amount equal to the estimated Federal share of the cost of such work if such work is later recommended by the Chief of Engineers and approved by the OASA(CW);

WHEREAS, Section 211 (e)(2)(B) of WRDA 96 further provides that for projects described in Section 211(f) the OASA (CW) shall credit the non-Federal interest for its share of the costs of the project work carried out before completion of the reconnaissance study by the OASA (CW), if such work is determined by the OASA (CW) to be compatible with the project later recommended by the OASA (CW);

WHEREAS, SJAFCA has incurred planning, design, and construction costs potentially eligible for reimbursement by the Government under Section 211 and will assume the responsibility to operate, maintain, repair, replace, and rehabilitate the Project;

WHEREAS, the Locally Constructed Project that is defined in Article I.B. of this Agreement, is similar to and provides the same levels of flood protection as the Federally Based Plan that is defined in Article I.A. of this Agreement;

WHEREAS, the Government and SJAFCA desire to enter into a Agreement for reimbursement of the Federal share of the Stockton Metropolitan Area Project, CA (Urban Features) (hereinafter the "Project" as defined in Article I.C. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662 (WRDA 86), as amended, specifies the cost-sharing requirements applicable to the Project;

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

WHEREAS, Section 102 of the FY 2000 Energy and Water Development Appropriations Act, as amended, specifies agreements shall be limited to credits and reimbursements per project not to exceed \$10,000,000 in each fiscal year, and total credits and reimbursements for all applicable projects not to exceed \$50,000,000 in each fiscal year;

WHEREAS, the FY 2001 Conference Report accompanying the FY 2001 Energy and Water Development Appropriation Act, Public Law 106-377, provided an initial \$4 million for reimbursement of SJAFCA applicable project costs.

NOW, THEREFORE, the Government and SJAFCA agree as follows:

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The "Federally Based Plan"(FBP), shall mean the levee improvements at several locations in the Stockton Watershed Area along the Bear Creek system including Bear Creek, Mosher Creek Diversion, Upper Mosher Creek upstream to the EBMUD Aqueduct, Paddy and South Paddy Creeks, Pixley Slough, Bear Creek Wing Levee, but excluding the Lower Mosher Slough element and the 3300 feet of upper Mosher Creek upstream of the EBMUD Aqueduct and the Calaveras River system; and including part of the Upper Calaveras River, from station 365+00 on the left bank and station 381+00 on the right bank down to the Stockton Diverting Canal, Mormon Slough, and Potter Creek-A as generally described in the 211 Study Report;

B. The term "Locally Constructed Project (LCP) " shall mean flood control improvements constructed by SJAFCA protecting the urban area of Stockton as generally described in the 211 Study Report. These improvements include levee improvements at several locations in the Stockton Watershed Area along the Bear Creek system; levee improvements at Bear Creek, Mosher Diversion and Upper Mosher Creek, Pixley Slough, Paddy and South Paddy Creeks, Bear Creek Wing Levee, and Lower Mosher Slough and the Calaveras River system; including Calaveras River and the Upper Calaveras River, Stockton Diverting Canal, Mormon Slough, and Potter Creek-A as generally described in the 211 Study Report.

C. The term "Project" shall mean those portions of the LCP, determined by the Government to be consistent with the FBP, and eligible for reimbursement under Section 211, which include the modifications to existing levees and the construction of new levees and flood walls, as generally described in the 211 Study Report.

D. The term "total project costs" shall mean all costs incurred by SJAFCA 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: planning and engineering costs incurred after May 1995; advanced engineering and design costs; pre-construction engineering and design costs; engineering and design costs during construction; costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.C. 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; cost of mitigation; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas determined by the Government 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.

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

F. 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.

G. 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.

H. 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.

I. The term "non-Federal share" shall mean SJAFCA's share of the total project costs as determined by the Government pursuant to Section 103 of WRDA 1986, as amended, and as described in Article II.C of this Agreement.

J. The term "Federal share" shall mean total project costs minus the non-Federal share.

ARTICLE II -OBLIGATIONS OF THE GOVERNMENT AND THE SJAFCA

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter "the Congress") shall reimburse SJAFCA an amount equal to that portion of the Federal share of the total project costs that was contributed by SJAFCA. The actual amount of reimbursement shall be based on an audit in accordance with Article X.C. of this agreement to determine the reasonable, allocable, and allowable total project costs and each party's share thereof.

B. SJAFCA shall furnish the Government with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual"), subject to review and approval by the Government, and with copies of all of SJAFCA's Written Notices of Acceptance of Completed Work for all contracts for the Project.

C. SJAFCA shall be responsible for a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. SJAFCA is responsible for an amount equal to 5 percent in cash of total project costs. Credit for the 5% is included in the Total Project Cost calculation and considered in the overall 25 % non-Federal contribution.

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

3. If the value of SJAFCA's responsibilities under paragraphs C.1. and C.2. of this Article and Articles V, and X of this Agreement are less than 25 percent of total project costs, SJAFCA shall be responsible for an additional amount, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the SJAFCA's total contribution equal to 25 percent of total project costs.

4. The value of SJAFCA's contribution provided under paragraph C.2. of this Article and Articles V and X, of this Agreement that exceeds 45 percent of total project costs shall be included in the Federal share of total project costs.

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

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

F. SJAFCA agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

G. Not less than once each year SJAFCA shall inform affected interests of the extent of protection afforded by the Project.

H. SJAFCA shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the floodplain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

I. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 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 interest shall implement such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

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

A. The Government, after consultation with SJAFCA, 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. Prior to reimbursement pursuant to Article II.C. of this Agreement, SJAFCA shall acquire all such lands, easements, and rights-of-way. For so long as the Project remains authorized, SJAFCA 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 SJAFCA are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with SJAFCA, shall determine the compensable 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. Prior to reimbursement pursuant to Article II.C. of this Agreement, SJAFCA shall perform or ensure the performance of all such relocations.

C. SJAFCA shall provide the Government, in a timely manner, with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A. and B. 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 and include such value in total project costs.

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

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

A. The Government shall include in total project costs the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas, and the value of the relocations that are determined by the Government to be required for the Project in accordance with Article III of this Agreement and that are provided by SJAFCA. However, the Government shall not include in total project costs 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 Government also shall not include in total project costs the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that reimbursement to SJAFCA for the value thereof is expressly authorized by statute.

B. For the purposes of determining total project costs and the reimbursement amount owed by the Government to SJAFCA 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 SJAFCA on July 10, 1996, the date SJAFCA awarded its first construction contract for the Project, shall be the fair market value of such real property interests as of such date. The fair market values of lands, easements, or rights-of-ways acquired by SJAFCA after July 10, 1996, 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. SJAFCA shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to SJAFCA 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 SJAFCA's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve SJAFCA's appraisal, SJAFCA may obtain a second appraisal, and the fair market value shall be the amount set forth in SJAFCA's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve SJAFCA's second appraisal, or SJAFCA chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by SJAFCA. In the event SJAFCA does not approve the Government's appraisal, the Government, after consultation with SJAFCA, shall consider the Government's and

SJAFCA's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by SJAFCA for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of SJAFCA, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with SJAFCA, 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 SJAFCA, 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 July 10, 1996, 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 SJAFCA within a 6-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 SJAFCA, 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.

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 reasonable, allocable, and allowable 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, SJAFCA 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 when necessary until the reimbursement has been completed. The Government's Project Manager and the counterpart named by SJAFCA shall co-chair the Project Coordination Team.

B. The Government's Project Manager and SJAFCA's counterpart shall keep the Project Coordination Team informed of the progress of reimbursement 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 completion of reimbursement, the Project Coordination Team shall generally oversee the Project including issues related to final inspection of the entire Project or functional portions of the Project; real property and relocation requirements, preparation of the proposed OM&RR&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 SJAFCA.

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 implementation of the Project, has the discretion to accept, reject or modify the Project Coordination Team's recommendation.

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

ARTICLE VI - METHOD OF PAYMENT

A. Subject to the recommendations of Congress, to the availability of appropriations, and to other limitations set forth in this Agreement, the Government shall provide cash payments to SJAFCA in the estimated amount of \$35,690,000, the estimated current reimbursement equal to Federal share of estimated total project cost of \$47,751,000 in accordance with this Agreement.

B. Upon resolution of all relevant issues, claims and appeals, or upon termination of the Agreement, the Government shall conduct a final accounting and furnish SJAFCA with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof.

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 50 percent 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.B. of this Agreement and for so long as the Project remains authorized, SJAFCA shall operate, maintain, repair, replace, and rehabilitate 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.

B. SJAFCA hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that SJAFCA owns or controls 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 SJAFCA for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to SJAFCA. If, after 30 calendar days from receipt of notice, SJAFCA continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that SJAFCA owns or

controls 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 SJAFCA of responsibility to meet SJAFCA's 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.

ARTICLE IX - INDEMNIFICATION

SJAFCA 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. The Government and SJAFCA shall maintain such books, records, documents, and other evidence for three years after full reimbursement is accomplished. To the extent permitted under applicable Federal laws and regulations, the Government and SJAFCA shall each allow the other to inspect such books, documents, records, and other evidence.

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

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

ARTICLE XI - FEDERAL AND STATE LAWS

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

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and SJAFCFA 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 there from.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time SJAFCFA fails to fulfill its obligations under Article II.C., or XVIII.C. of this Agreement, the Office of 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 reimbursement for the then-current or upcoming fiscal year, the Government shall so notify SJAFCFA in writing, and 60 calendar days thereafter either party may elect without penalty to suspend 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.

C. Any suspension of future performance under this Agreement in accordance with this Article of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, SJAFCA shall perform, or cause to be performed, any investigations for hazardous substances that the Government or SJAFCA determines 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 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be 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 SJAFCA with prior specific written direction, in which case SJAFCA shall perform such investigations in accordance with such written direction. All actual costs incurred by SJAFCA for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonable, allocable, and allowable 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, SJAFCA and the Government shall provide prompt written notice to each other, and SJAFCA shall not proceed with the acquisition of the real property interests until both parties agree that SJAFCA should proceed.

C. The Government and SJAFCA 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 SJAFCA determine to initiate or continue with construction after considering any liability that may arise under CERCLA, SJAFCA shall be responsible, as between the Government and SJAFCA, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event SJAFCA fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge SJAFCA's 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. SJAFCA 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 SJAFCA, SJAFCA shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, SJAFCA 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 SJAFCA:

San Joaquin Area Flood Control Agency
425 North El Dorado Street
Stockton, CA 95202-1997

If to the Government:

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

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

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

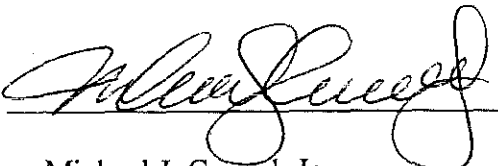
A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Office of the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the SJAFCA and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by SJAFCA, and 75 percent borne by the Government.

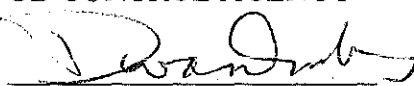
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander of Sacramento District.

THE DEPARTMENT OF THE ARMY

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

DATE: 2 March 02

THE SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

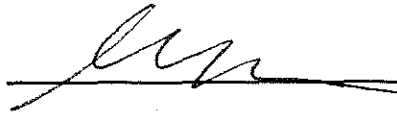
BY: 
Dwane Milnes
Executive Director

DATE: Feb 27, 2002

CERTIFICATE OF AUTHORITY

I, Steve Meyers, do hereby certify that I am the principal legal officer of the San Joaquin Area Flood Control Agency, that the San Joaquin Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the San Joaquin Area Flood Control Agency in connection with the Stockton Metropolitan Area Watershed, California (Urban Features) 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 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the San Joaquin Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
28 day of February 19 2002



Meyers, Nave, Riback, Silver, & Wilson
Agency Counsel
San Joaquin Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

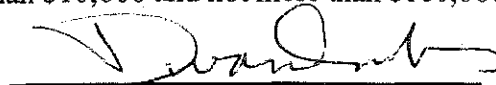
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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.



Dwane Milnes

Executive Director

San Joaquin Area Flood Control Agency

DATE: _____

Feb 27, 2002