

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942886
SACRAMENTO, CA 94236-0001
(916) 653-5791



September 14, 2012

San Joaquin Flood Control Agency
22 E. Weber Ave
Stockton, California 95202

Attention: Roger Churchwell



DWR Agreement Number: 4600009799

Dear Roger Churchwell:

Enclosed for your records is one fully executed copy of subject agreement mentioned above. To ensure **prompt payment** of your billing, please **reference** the contract number identified above when submitting invoices.

Inquiries concerning the services to be performed under this agreement should be referred to Paul Morrison at 916-574-0272.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Bustos".

Brian Bustos
Contract Specialist
Contract Services Office
(916) 651-7497

Enclosure

AGREEMENT NUMBER

4600009799

REGISTRATION NUMBER

EP1242519

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

San Joaquin Flood Control Agency (SJAFCA)

2. The term of this Agreement is: August 1, 2012 through April 30, 2015
This Agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this Agreement is: \$ 2,412,500.00
Two million four hundred twelve thousand five hundred 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.

See the attached Agreement Between the State of California Department of Water Resources and the San Joaquin Area Flood Control Agency for The Design of The Smith Canal Closure Structure, Program Management (Design Phase), Engineering Design project.

Signatures appear on page 17 of 40 of this Agreement

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

CONTRACTOR

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

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

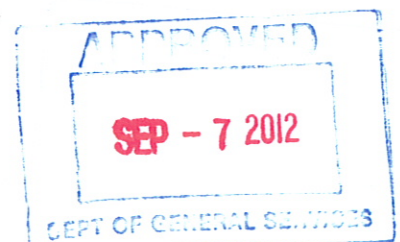
BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General
Services Use Only



Approved as to legal form
and sufficiency
Kari Butera, ASFA
Asst. Chief Counsel, DWR

7-5-12

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND THE

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

FOR

THE DESIGN OF THE SMITH CANAL CLOSURE STRUCTURE

FUNDED UNDER THE
STATE- FEDERAL FLOOD CONTROL SYSTEM MODIFICATION PROGRAM
(EARLY IMPLEMENTATION PROGRAM)

OF

THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

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Exhibit A, Overall Work Plan, Budget, and Schedule

Exhibit B, Standard Conditions

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Exhibit D, Draft Resolution Accepting Funds

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
FUNDING AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
UNDER THE
CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006
(Public Resources Code Sections 5096.800 et seq.)

THIS FUNDING AGREEMENT, entered into by and between State of California, acting by and through the Department of Water Resources, herein referred to as the "State" and the San Joaquin Area flood Control Agency, herein referred to as "SJAFC", a public agency in the County of **San Joaquin**, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

The terms listed below shall have the meaning indicated wherever used in this Funding Agreement.

"Agreement to Seek Credit or Reimbursement:" An agreement entered into by the Funding Recipient with an appropriate legal entity to seek credit or reimbursement from the federal government for funds expended under this Funding Agreement that is entered into in accordance with the provisions of Paragraph 8(d).

"CEQA:" The California Environmental Quality Act.

"Credit:" Local expenditures toward Eligible Project Costs incurred prior to execution of a Funding Agreement that are recognized by the State as part of the local cost share for the Project.

"Department:" Refers to the State of California Department of Water Resources (DWR).

"Design Project:" Refers to a project as described in Exhibit A, Article A-1, that does not involve actual construction work. Design Projects involve final design of a Project and could include environmental and other permitting activities and real estate support activities as set forth in the Overall Work Plan. Design Projects do not include work associated with preliminary Project design, preliminary environmental studies to choose a preferred alternative, construction, or real estate acquisition.

"Eligible Project Costs:" The reasonable and necessary actual costs associated with the Design Project which are described in Paragraph 7, to the extent to which they are to be counted toward the Total Project Cost.

"Funding Recipient:" A public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement, and its successors and assigns.

"Independent Review:" A review conducted, at the Department's discretion, of design and construction activities prior to the initiation of physical construction and periodically thereafter until construction activities are completed on a regular schedule sufficient to inform the Department on the adequacy, appropriateness, and acceptability of the design and construction activities for the purpose of assuring public health, safety, and welfare.

"Level of Protection:" Relates to the probability of flooding in any one year. It is expressed as 1 in x annual chance of flooding (e.g., 1 in 50 annual chance of flooding is a 50-year level of protection.) measured in accordance with the interim levee design criteria in urban areas. This term is different than "Design Level of Performance" which deals with the performance level of the facility at issue based on the original intended design.

"OMRR&R:" Operation, maintenance, repair, replacement, and rehabilitation of the Project.

"Overall Work Plan:" The plan described in Paragraph 22(a) and Exhibit A-1.

"Preliminary Design Plans:" Refers to the Preliminary Design Plans created as the Funding Recipient works towards a final design. This could include 30, 60 and 90 percent design plans.

"Preliminary Environmental Documents:" Refers to any draft environmental documents, including drafts prepared for public meetings, public comments and any responses.

"Project:" The project described in the Overall Work Plan. Under this Funding Agreement also refers to "Design Project."

"Project Completion Report:" The report required by Paragraph 22(d) and further described in Exhibit C.

"Project Costs:" The total cost of this Design Project.

"Quarterly Progress Reports:" The reports required by Paragraph 22(c) and further described in Exhibit C.

"Quarterly Work Plans:" The reports required by Paragraph 22(b) and further described in Exhibit C.

"Real Estate Capital Outlay Costs:" Reasonably justified costs for real property interests (fee/easement), private utility line relocation (i.e. utility lines serving only one party), damage expenses (wells, fences, irrigation systems) and relocation assistance programs.

"Real Estate Support Costs:" Reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney's services fees, engineering services fees, court costs, and title and closing costs.

"State:" The State of California, acting by and through the Department of Water Resources.

"State Program Manager:" Representative for the State that will have authority to make determinations and findings with respect to any controversy arising under or in connections with the interpretation, performance, or payment for work performed under the Funding Agreement. The Program Manager may appoint a Project Manager to handle most project management-related tasks.

"State Project Manager:" Representative for the State that will receive all notices, demands, requests, consents, or approvals that are required under the Funding Agreement to be in writing. The Project Manager is appointed by the Program Manager and can be changed by the Program Manager upon written notice to all parties to this agreement.

"Statement of Costs:" A Statement of incurred costs submitted pursuant to Paragraph 15.

"Total Project Cost:" The portion of the project cost that is to be shared between the Department and the Local Agency. The costs contributed by other entities or programs are not included in the Total Project Cost.

"Urban Area:" Any contiguous area in which more than 10,000 residents are protected by project levees.

"USACE:" The United States Army Corps of Engineers.

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing the design of features of Smith Canal Closure Structure. This is an Early Implementation Program Project under the State-Federal Flood Control System Modification Program pursuant to Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the California Public Resources Code. Funds may be used for design work only as provided in this Funding Agreement for Eligible Project Costs for the Design Project described in Exhibit A-1, Overall Work Plan.

This Funding Agreement governs the work described in the Overall Work Plan. The Funding Recipient may begin the design work authorized by this Funding Agreement before its environmental (CEQA, NEPA, etc.) documents are complete, but may not begin actual construction of the Project until all environmental work is finished.

Work subject to environmental requirements (such as the CEQA and/or NEPA) shall not proceed under this Agreement.

Execution of this Funding Agreement does not bind the State in any way to approve construction of a project. Construction of the project that results from this Design Project will require a new funding agreement. Along with other potential reasons, a funding agreement for construction will

not be executed unless the Funding Recipient can demonstrate that the benefit-cost ratio of the construction project is greater than 1.0.

2. **TERM OF FUNDING AGREEMENT.** The term of the Funding Agreement shall be from the latest date of execution by the Department of Water Resources and approval by the Department of General Services through April 2015. The State and Funding Recipient anticipate that a subsequent Funding Agreement covering construction of the Project may be executed before the end of this term.
3. **PROJECT SCHEDULE.** Funding Recipient shall diligently perform or cause to be performed all project work in accordance with the Project Schedule as shown in Exhibit A-1-B or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Exhibit A-1-B, the State reserves the right to exercise the withholding remedies provided in Paragraphs 17-19 of this Agreement.
4. **PROJECT COST.** The reasonable total cost of this Design Project is estimated to be \$4,825,000.
5. **LIMIT ON STATE FUNDS.** Pursuant to the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and subject to the availability of funds, including any mandates from the Department of Finance, the Pooled Money Investment Board ("PMIB") or any other state authority, the State will provide to Funding Recipient in accordance with the terms of this Funding Agreement for the State cost share an amount not to exceed \$2,412,500. The State will not make payments of any kind -- advances or reimbursements -- until funding is made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and Department of Finance. Funding recipients will only be entitled to State funds for Eligible Project Costs, as defined in Paragraph 7, and calculated in accordance with the cost sharing provisions in Paragraph 8.
6. **FUNDING RECIPIENT'S COST.** Funding Recipient agrees to fund the difference, if any, between the actual Design Project costs and the amount paid by the State for its share of Eligible Project Costs.
7. **ELIGIBLE PROJECT COSTS.** Funding Recipient shall only apply State funds for Eligible Project Costs. Except as otherwise provided in Paragraph 14(b), Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Design Project incurred after November 7, 2006 (date of passage of Proposition 1E) including, but not limited to the following:
 - a) Eligible Real Estate Support Costs specified in Funding Recipient's Overall Work Plan that are necessary for the Design Project;
 - b) Project design costs;
 - c) Costs of obtaining environmental permits, not including any associated environmental mitigation costs. For CEQA and NEPA costs incurred before this Funding Agreement was executed see Paragraph 8(a) and 14(b);
 - d) Costs of obtaining other necessary federal or state governmental approvals;

- e) Legal fees associated with incurring Eligible Project Costs, such as those listed in (a) through (d) above;
- f) A proportionate share of reasonable overhead costs; and
- g) The costs of any Independent Review of the Project.

Costs that are **not** eligible include, but are not limited to, the following:

- h) Operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") costs ;
- i) Construction costs;
- j) Purchase of equipment that is not an integral part of the Project;
- k) Establishing a reserve fund;
- l) Replacement of existing funding sources for ongoing projects;
- m) Support of existing agency requirements and mandates;
- n) Real estate costs, including the purchase of land or purchase of an interest in the land, that are beyond those required for Design Project purposes;
- o) Costs that the State does not authorize as part of final accounting;
- p) Payment of principal or interest of existing indebtedness, or any interest payments, unless the following conditions are met: the debt is incurred after effective date of a Funding Agreement with the State, State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise reimbursable project costs;
- q) Costs incurred as part of any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Account Act or other applicable law; and
- r) Environmental mitigation and monitoring costs.

8. **COST SHARING.**

- a) The State will cost-share 50% of the work associated with this Design Project. The Funding Recipient will pay for the other 50%. If the construction project resulting from this Design Project ultimately achieves a higher cost share and the State approves that project, the State will adjust the difference with the Funding Recipient by crediting the funds necessary during the funding of the construction project. In addition, the State will provide credit, at a 50% State cost-share, for all directly related and necessary environmental compliance work (CEQA, NEPA, etc.) completed before the Funding Agreement is executed. The State may also provide credit, at a 50% State cost-share, for design costs incurred before the date of this Funding Agreement. See Paragraph

14(b). No Local Agency may use other State funds for its local share unless the State agency providing those funds is specifically authorized by the Legislature to allow the Local Agency to use the funds for its local share and the State agency gives the Local Agency its written permission to use the funds provided by the State agency for the local share.

- b) Funding Recipient understands that these cost sharing percentages are based on the assumption that the State and the Funding Recipient will have to pay the federal share that would otherwise be paid if this Project were authorized and funded by Congress. Funding Recipient understands, however, that the State is required as a condition of using funds from the Disaster Preparedness and Flood Protection Act of 2006 to seek the maximum feasible cost-share from the federal government and must have the full cooperation of the Funding Recipient in making the arrangements necessary to put the State in a position where Project costs will be eligible for federal credit or reimbursement. The Funding Recipient agrees:
- 1) The State shall not disburse any funds under this Funding Agreement until the Funding Recipient has committed to submitting a complete application for federal credit or reimbursement from the USACE as directed by the State. In its sole discretion, the State may waive or modify this requirement provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 25 of this Funding Agreement.
 - 2) Funding Recipient shall promptly provide copies of all correspondence relating to the application to the State and will provide timely advance notice of meetings, if any, between the Funding Recipient and the USACE concerning the federal credit or reimbursement application.
 - 3) If requested to do so by the USACE, Funding Recipient shall enter into an agreement with the USACE to provide assurances that it will be responsible for OMRR&R for the Project in accordance with federal law and shall indemnify the federal government and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the Project.
 - 4) If the USACE decides that amendments to the federal credit or reimbursement application, this Funding Agreement, or new agreements between the Funding Recipient and the State are required for the USACE to provide federal credit or reimbursement, Funding Recipient shall not unreasonably withhold its consent to enter into such agreements.
 - 5) Funding Recipient shall diligently pursue obtaining federal credit or reimbursement from the USACE and failure to do so shall be considered an event of default under this Funding Agreement.
- c) If the Funding Recipient is not the local/non-federal sponsor of a federally authorized project, the Funding Recipient represents and warrants:

- 1) Funding Recipient has submitted to the State a legally binding Agreement to Seek Credit or Reimbursement with an appropriate legal entity to file a request for credit or reimbursement from the federal government. The Agreement to Seek Credit or Reimbursement shall commit the appropriate legal entity to comply with terms similar to those that would be required of the Funding Recipient under this Paragraph 8 of the Funding Agreement. This Agreement to Seek Credit or Reimbursement shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.
- 2) Funding Recipient will comply with the terms of this Agreement to Seek Credit or Reimbursement.
- 3) Funding Recipient will not seek funds under this Funding Agreement until an application for credit or reimbursement has been filed in accordance with the Agreement to Seek Credit or Reimbursement.
- 4) In the event that the counter-party to the Agreement to Seek Credit or Reimbursement fails to comply with the terms of the Agreement to Seek Credit or Reimbursement, Funding Recipient agrees that it shall continue to use best efforts to obtain credit or reimbursement from the federal government.

In its sole discretion, the State may waive or modify the requirements of this paragraph provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 25 of this Funding Agreement.

9. **FUNDING RECIPIENT'S RESPONSIBILITY FOR WORK.** Funding Recipient shall be responsible for work and for persons or entities engaged in work, including, but not limited to, its engineers, contractors, subcontractors, suppliers, providers of services, and other respective agents and employees who shall act in an independent capacity and not as officers, employees or agents of the State. Funding Recipient shall give personal supervision to any work required under this Funding Agreement or employ a competent representative, satisfactory to State, with the authority to act for Funding Recipient. Funding Recipient or its authorized representative shall be present while work is in progress. Funding Recipient shall give attention to fulfillment of the Funding Agreement and completion of the Project, and shall keep work under control. Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to bid disputes and payment disputes with Funding Recipient's contractors and subcontractors. State will not mediate disputes between Funding Recipient and any other entity concerning responsibility for performance of work.
10. **RELATIONSHIP OF PARTIES.** Funding Recipient is acting in an independent capacity and is solely responsible for its design work. Review or approval of plans, specifications, or any other documents related to this Design Project by the State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict Funding Recipient's responsibility.
11. **PERFORMANCE AND ASSURANCES.** Funding Recipient agrees to faithfully and expeditiously perform or cause to be performed all Design Project work as described in the final plans and

specifications under this Funding Agreement and to apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law.

12. **REQUIREMENTS FOR DISBURSEMENT.** Funding Recipient shall meet all conditions precedent to the disbursement of money under this Funding Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Funding Agreement. State shall have no obligation to disburse money under this Funding Agreement unless and until the disbursement is in accordance with requirements of the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and:

- a) Funding Recipient has provided a copy of a resolution adopted by its governing body accepting the Funds, and designated a representative to execute this Funding Agreement and to sign requests for disbursement of State funds. The resolution must be substantially the same as the draft resolution provided in Exhibit D to this Funding Agreement.
- b) An application for credit or reimbursement has been filed with the federal government as provided for in Paragraph 8 of this Funding Agreement.
- c) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports, Preliminary Design Plans and Preliminary Environmental Documents as required by Paragraph 22.
- d) The necessary funding has been made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and the Department of Finance, as discussed above in Paragraph 5.

13. **ADVANCE WORK APPROVALS BY STATE.**

Except for the first Quarterly Work Plan, at least forty-five days prior to disbursement of funds by State, the Funding Recipient shall submit a Quarterly Work Plan in accordance with Paragraph 22. No disbursement of funds for the work described in a Quarterly Work Plan will be made until the State has approved the Quarterly Work Plan.

14. **PAYMENTS AND CREDITS FOR STATE SHARE OF ELIGIBLE PROJECT COSTS.** Eligible Project Costs will be paid or credited by the State in accordance with the cost sharing provisions in Paragraph 8 and according to one or more of the following methods:

- a) The State may provide credit towards the Funding Recipient's share of overall eligible Design Project costs that were incurred after November 7, 2006, but before the effective date of the Funding Agreement. These costs must be either (a) design costs directly related to the Design Project and necessary for its completion, or (b) costs necessary for the completion of environmental work (CEQA, NEPA, etc.) that are directly related to the Design Project.

If the Funding Recipient seeks credit for Eligible Project Costs under this paragraph, the Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 15. The Statement of Costs shall be

submitted within 14 days of the effective date of this Funding Agreement. The State may provide credit, in its sole discretion, for these Eligible Project Costs if it finds that they were incurred for implementation of the Project. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs.

- b) This subpart sets forth a process for advance payments of the State share of Eligible Project Costs. Advance payments are made on the basis of estimated budgets included in Quarterly Work Plans and are adjusted quarterly on the basis of a statement of actual Eligible Project Costs.

As soon as possible prior to commencement of the work to be performed from the effective date of this Funding Agreement through the end of the calendar quarter and forty-five days prior to each calendar quarter thereafter, Funding Recipient shall submit to State a Quarterly Work Plan for each calendar quarter in accordance with Paragraph 22. State shall receive and approve the proposed work and cost estimate provided in the Quarterly Work Plan. State shall pay in advance on a quarterly basis for approved Eligible Project Costs) its cost share of the work covered in the Quarterly Work Plans submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 15. If State determines that advances in that quarter exceed actual costs in that same quarter, such amounts may be applied against advances in succeeding quarters.

If State determines that advances exceed the State's share of total actual Eligible Project Costs, State may withhold advance payments equal to amounts advanced in excess of the State's share of Eligible Project Costs, but only after Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Funding Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of 25 percent (25%). This withholding will be held until the required Statements of Costs are provided, at which point the detailed expenditures will be adjusted accordingly. The expenditure calculation shall be subject to withholding in accordance with Paragraph 17.

- 15. **STATEMENT OF COSTS.** For all Eligible Project Costs, including Real Estate Support Costs, Funding Recipient shall provide State with a Statement of Costs or Statements of Costs, on forms provided by State.

- a) Statements of Costs shall be filed monthly or for such longer periods as State and Funding Recipient may mutually agree. Funding Recipient shall provide a statement of the incurred Eligible Project Costs for work performed during the period identified in the particular statement. Each Statement of Costs shall also include: (1) information required to verify that claimed costs were incurred, such as contractor and vendor invoices and receipts for equipment and supplies; (2) a statement of Funding Recipient's payments made to cover its share of Eligible Project Costs, if applicable; and (3) a comparison of the actual incurred Eligible Project Costs with those projected in the Quarterly Work

Plans and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Work Plan budget.

- b) The State will review each Quarterly Work Plan and each Statement of Costs to determine whether claimed costs are, in the opinion of the State, Eligible Project Costs and whether the Funding Recipient has provided adequate information to verify that claimed expenses were incurred.
- c) State may reject a Statement of Costs if: (1) it is submitted without signature; (2) it is submitted under signature of a person other than Funding Recipient's Program or Project Manager; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 15(f). State will notify Funding Recipient of any Statement of Costs so rejected, and the reasons therefore.
- d) A Statement of Costs containing a mathematical error will be corrected by State, after a telephone call or email to Funding Recipient; and will thereafter be treated as if submitted in the corrected amount. State will provide Funding Recipient with notification of the corrected Statement of Costs.
- e) State will notify Funding Recipient by mail, whenever, upon review of a Statement of Costs, State determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this Funding Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Funding Agreement; or (3) are not supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). Funding Recipient may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. Disputes concerning whether costs are Eligible Projects Costs and have been adequately documented will be resolved in accordance with the dispute resolution process set forth in Paragraph 20.
- f) The State must review and approve the design plans resulting from the Design Project. Such plans must be submitted to the State within fourteen (14) days after they are completed. Upon completion or termination of the Design Project, Funding Recipient shall furnish to State, within sixty (60) days, a final Statement of Costs for the Project. Periodic cost statements and the final Statement of Costs shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as provided in Paragraph 5 and those costs that represent Funding Recipient's costs, Paragraph 6.
- g) All Statements of Costs shall be accompanied by a statement signed by the Funding Recipient's Program or Project Manager that the statement is correct to the best of his or her knowledge and belief after an investigation that is reasonable under the circumstances and is submitted under penalty of perjury.

- h) At the sole discretion of the State, the State may modify the requirements for preparation and submittal of Statements of Costs in order to improve administration of the State-Federal Flood Control System Modification Program or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.
16. **DISBURSEMENT.** Consistent with Paragraphs 12 and 14, State will disburse to Funding Recipient the amounts approved, subject to the availability of funds. Funds will be disbursed by State in accordance with the cost-sharing provisions in Paragraph 8, the relative payment obligations of Funding Recipient, Paragraph 6, and State, Paragraph 5, up to the Total Project Cost, Paragraph 4. Any and all money disbursed to Funding Recipient under this Funding Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.
17. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs, with the exception of Eligible Project Costs advances, the State shall withhold ten percent (10%) of the State share until the Design Project for which the payment is made is completed. A Design Project shall not be considered completed until (1) the work has been completed to the State's satisfaction; (2) a final Statement of Costs has been submitted for Eligible Project Costs for the Design Project; and (3) the State has approved the final design plans resulting from the Design Project.
- If State determines that the Design Project was not completed substantially in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply substantially with the provisions of this Funding Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests. If the Funding Recipient must remedy a failure to comply, and the remedy increases Eligible Project Costs, the State may disallow payment of the State's share of the increase in Eligible Project Costs.
18. **WITHHOLDING THE BALANCE OF FUNDING AMOUNT.** Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 17, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by State. Refusal of Funding Recipient to repay may, at the option of State, be considered a breach of agreement and may be treated as default under Paragraph 20.
19. **WITHHOLDING THE ENTIRE FUNDING AMOUNT.** If State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to Paragraph 17, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient and the State shall no longer be required to provide funds under this Funding Agreement.
20. **DEFAULT PROVISIONS AND DISPUTE RESOLUTION.**
- a) Events of Default. Funding Recipient will be in default under this Funding Agreement if any of the following occur

- 1) Breach of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
 - 2) Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement; or
 - 3) Failure to make any remittance required by this Funding Agreement.
- b) Consequences of Default. Should an event of default occur, State shall provide a notice of default to the Funding Recipient. If the Funding Recipient fails to cure the default within the time (not less than 10 days) prescribed by the State, State may do any or all of the following:
- 1) Declare the funds be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default;
 - 2) Terminate any obligation to make future payments to Funding Recipient;
 - 3) Terminate the Funding Agreement; and
 - 4) Take any other action that it deems necessary to protect its interests, including but not limited to completing the work and requiring the Funding Recipient to pay the cost of the work, less the State cost share.

c) Dispute Resolution.

Any claim that Funding Recipient may have regarding the performance of this Funding Agreement including, but not limited to claims for an extension of time, shall be submitted to the Program Manager, Department of Water Resources, within thirty (30) calendar days of Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of such claim and process an amendment to the Funding Agreement to implement the terms of any such resolution.

Before either party to this Funding Agreement may bring suit in any court concerning an issue relating to this Funding Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties. Any costs of dispute resolution shall be shared evenly by the parties. Except as specifically provided in this Funding Agreement, the existence of a dispute shall not excuse the parties from performance pursuant to this Funding Agreement.

In the event State finds it necessary to enforce any provision of this Funding Agreement in a court of law, Funding Recipient agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

21. **REAL ESTATE COSTS.** This Funding Agreement covers Real Estate Support Costs necessary for the Design Project Eligible Project Costs. Such costs will be presented in the same manner as all other costs eligible under this Funding Agreement and detailed to the State in the required Statements of Costs.

Real Estate Capital Outlay Costs incurred as part of the land acquisition process shall not be considered Eligible Project Costs under this Design Project Funding Agreement. To the extent, however, that the Funding Recipient is pursuing any land acquisition activities such as actively acquiring any land, any interest in land (such as an option agreement), paying for relocations of public or private facilities, or providing relocation assistance in anticipation of construction, Funding Recipient shall consult with the State in order to claim such Real Estate Capital Outlay costs in any subsequent construction Funding Agreement. The Funding Recipient is at risk of not receiving cost-sharing for any land acquisition activities performed prior to State's approval.

22. **SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.**

- a) Overall Work Plans: An Overall Work Plan, Budget, and Schedule for the Project are included as Exhibit A to this Funding Agreement.
- b) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Funding Agreement. Within seven (7) days of the effective date of this Funding Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Funding Agreement and the end of that calendar quarter and then quarterly thereafter. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days before the work covered by the plan is scheduled to begin. Exhibit C, Quarterly Work Plan and Report Formats, provides an example template for the Quarterly Work Plan.
- c) Quarterly Progress Reports: Funding Recipient shall submit progress reports on the status of the Project to State. Progress reports shall be filed quarterly. No later than 60 days after the time period covered by a Quarterly Work Plan, the Funding Recipient shall submit a Quarterly Progress Report for the time period covered by the Quarterly Work Plan. The submittal and approval of these reports is a requirement for continued disbursement of State funds. Quarterly Progress reports shall summarize the work completed during the reporting period, include a statement of progress compared to the Design Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project. The reports shall include total interest earned to date on State funds, and any lease credits due to the State from lease agreements, if any. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template. The Funding Recipient may request in writing that the State grant permission to combine the Quarterly Progress Report required by this paragraph with other reports required by this Funding Agreement and the State may, at its sole discretion, approve such a request.

- d) Preliminary Documents: During the course of the Design Project, Funding Recipient shall submit to State, when available, Preliminary Design Plans such as 30, 60 and 90 percent plans and Preliminary Environmental Documents. The State will review these preliminary documents
- e) Project Completion Report: Funding Recipient shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks associated with the Project. The Final Project Report shall include the actual design work done, and a final schedule showing actual progress versus planned progress...
- f) Compliance with Executive Order S-02-07: At the sole discretion of the State, the State may modify the requirements for preparation and submittal of work plans and reports called for in this Funding Agreement in order to improve administration of the State-Federal Flood Control System Modification Program or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.
- g) Flood Risk Resolution: Funding Recipient has acknowledged the current Level of Protection and flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities or counties and other agencies with flood management responsibilities located in the areas protected by their proposed projects. Funding Recipient has provided copies of the resolution or resolutions to the State. The Funding Recipient acknowledges that each resolution provides that any subsequent resolutions that would modify or rescind the resolution must be first approved by the State. Funding Recipient agrees that it shall provide any subsequent resolution for approval by the State no less than thirty (30) days before the resolution is acted upon by the governing body of the affected city or county or other agency with flood management responsibilities. State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.

23. **SAFETY AND EMERGENCY RESPONSE PLANS.** Funding Recipient agrees to provide State an acceptable detailed safety plan before completion of the Design Project. The safety plan will be consistent with the requirements for such plans codified at Cal. Water Code § 9650(b). The Funding Recipient agrees to use best efforts to ensure that the safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan. Failure to meet these requirements may, at the option of State, be considered a breach of the Funding Agreement and may be treated as default under Paragraph 20. Funding Recipient shall update the plan as provided in any subsequent OMRR&R agreement.

24. **PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS.** Funding Recipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Design Project Funding Agreement. Funding Recipient shall be responsible for observing and complying with any applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances. Upon request, Funding Recipient shall provide copies of permits and approvals.

Without limiting the foregoing, Funding Recipient shall keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this Funding Agreement including any payments to the Dept. of Industrial Relations under CA Labor Code Section 1771.3.

25. **PROGRAM AND PROJECT MANAGERS.** Either party may change its Program or Project Manager upon written notice to the other party.
- a) State's Program Manager: Shall be the Chief, Division of Flood Management, Department of Water Resources. State's Program Manager shall be State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.
 - b) Funding Recipient's Program Manager: Funding Recipient's Program Manager shall be Deputy Executive Director. Funding Recipient's Program Manager shall be the Agency's representative for the administration of the Funding Agreement and shall have full authority to act on behalf of the Agency, including authority to execute all payment requests. The Funding Recipient's Program Manager may delegate tasks to the Funding Recipient's Project Manager.
26. **NOTICES.** Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing to Project Manager. Notices may be sent by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by facsimile transmission, followed submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by U.S. mail will be deemed effective five (5) business days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent by facsimile will be effective on the date of successful transmission, which is documented in writing. Notices shall be sent to the following addresses. Either party may, by written notice to the other, change its Project Manager or designate a different address that shall be substituted for the one below:

State of California
Department of Water Resources
Division of Flood Management
Attention: Project Manager
Early Implementation Program
3310 El Camino Avenue Room 180
Sacramento, California 95821

Roger Churchwell

San Joaquin Area Flood Control Agency
22 E. Weber Ave. Stockton, California 95202.

27. **INCORPORATION OF EXHIBITS.** This Funding Agreement incorporates:

Exhibit A, Overall Work Plan, Budget, and Schedule
Exhibit B, Standard Conditions
Exhibit C, Quarterly Work Plan and Report Formats
Exhibit D, Draft Resolution Accepting Funds

28. **MODIFICATION OF OVERALL WORK PLAN.**

The Department will consider approving or requiring changes to the Overall Work Plan due to circumstances that were not reasonably foreseeable at the time the Funding Agreement was executed. The Department shall allow non-material changes to be made to the Overall Work Plan without formally amending the Funding Agreement. In particular:

- The Department may approve or require changes to the design plans in the Overall Work Plan if, at the sole discretion of the Department, the Department determines that the changes will improve the Project design. Changes to the design plans will not be considered material unless they result in a material change to the budget or schedule.
- The Department may approve or require changes to the portion of the Overall Work Plan that sets forth the Project schedule. Changes to the schedule will not be considered material unless they extend the term of the Funding Agreement.
- The Department may approve or require changes to the portions of the Overall Work Plan which concern the Project budget. Changes to the budget will not be considered material unless the change would require an amendment to the Funding Agreement under this Paragraph to increase or decrease the State funding commitment.

29. **INDEPENDENT REVIEW.** At its sole discretion the Department may order an Independent Review of Funding Recipient's design plan. Any Independent Review shall be conducted in the manner set forth in the *Early Implementation Program Guidelines*. The costs of the Independent Review will be paid by the Funding Recipient, but are Eligible Project Costs and the State will reimburse the Funding Recipient for 100% of the costs associated with conducting the Independent Review. The Funding Recipient agrees to cooperate fully with the State in conducting the Independent Review and agrees to make any required change to the Overall Work Plan if the Independent Review should suggest changes so long as those changes add no more than 15% to the cost of the Design Project and the State requires the change(s). The State also reserves the right to remove features of the Design Project that have become unaffordable or no longer demonstrate economic feasibility because of the Independent Review results. If the changes suggested by the Independent Review cost more than 15% of the total Design Project cost and render the Design Project unaffordable, the State and Funding Recipient commit to working together in good faith to identify more affordable, feasible and efficient ways of achieving the Project goals. This agreement to work together in good faith includes a commitment to seek additional sources of funding for these increased Design Project costs. Modifications to the Overall Work Plan shall be made in accordance with Paragraph 28 of this Funding Agreement.

30. **FUNDING RECIPIENT COMMITMENTS.** Funding Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for California Disaster Preparedness and Flood Prevention Bond Act of 2006.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement as of:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

FUNDING RECIPIENT

By 
Keith Swanson
Chief, Division of Flood Management

By 
James B. Giottonini
Executive Director

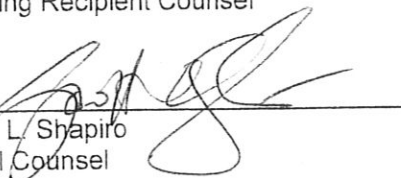
Date: 8/1/12

Date: 7/18/12

Approved as to Legal Form
And Sufficiency:

Approved as to Legal Form
And Sufficiency:
Funding Recipient Counsel

By 
Ward Tabor
Assistant Chief Counsel

By 
Scott L. Shapiro
Legal Counsel

Date: 7-5-12

Date: 7/10/12

OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE

Directions: Funding Recipient shall prepare an Overall Work Plan, Overall Project Budget, and Overall Project Schedule.

Funding Recipients should include all work to be done with the respect to the Design Project in the plan, budget, and schedule.

The Overall Work Plan should be organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE

Funding Recipients should also note that, while the Funding Agreement requires the Funding Recipient to submit the first Quarterly Work Plan within seven days of the effective date of the Funding Agreement, the Quarterly Work Plan will not be a part of this Funding Agreement.

EXHIBIT A

ARTICLE A-1-A. OVERALL PROJECT WORK PLAN

Design Phase Work Plan:

SJAFCA initiated the design phase of this project in 2008 and has advanced the project design to the 30% design stage. SJAFCA will be seeking credit for the work completed to date prior to execution of the funding agreement. The following is a draft work plan for the work proposed to be conducted during the remainder of the project design phase. SJAFCA will utilize a team of professional consultants, comprised for many disciplines, to carry out the tasks included in this work plan. It should be noted that this is a draft work plan and additional tasks may need to be added as the design of the closure structure evolves and progresses.

Task 1.0 – Program Management:

The Smith Canal closure structure is a complex project involving many overlapping layers of regulatory review and approval. A significant level of programmatic oversight will be required to ensure that the project proceeds as smoothly and efficiently as possible. This work will include a number of subtasks, including but not limited to:

- Administration
- Accounting/Financial
- Legal

Task 2.0 – Engineering Design:

Engineering services, including but not limited to surveying, hydrologic, hydraulic, civil, structural, electrical, mechanical and geotechnical engineering will be required to develop the closure structure design documents. This work will involve a number of subtasks including but not limited to:

- Perform engineering for the design of the dual sheet pile structure. Features include composite action of the fill material and the interlocking steel piling with regularly spaced anchor tie-rods exhibiting the behavior of cellular sheet pile structures.
- Perform engineering for the design of pile supported concrete foundation and control gate superstructure. Features include cast-in-steel-shell pile supported concrete slab and cellular sheet pile foundation supporting concrete walls for the "Obermeyer" gate.
- Perform engineering for the "Obermeyer" gate systems
- Perform engineering for the design of "Obermeyer" gate control building. Features include a building containing the operation of all electrical, pneumatic and mechanical controls required for the operation of the gate. Design includes electric service to site, diesel generated back-up power, interior and exterior lighting, security, communications and visual and audible gate operation warning system.

- Perform engineering for the design of sheet pile floodwall along "Dad's Point." Features include design of cantilever sheet pile flood wall to be constructed on the "Stockton Deep Water Ship Channel" side of "Dad's Point" with a 12-foot wide patrol road on the crown.
- Prepare 60%, 90% and 100% design documentation reports documenting the design effort and the basis of design for the construction plans and specifications.
- Prepare 60%, 90% and 100% construction plans.
- Prepare 60%, 90% and 100% technical specifications in Construction Specification Institute (CSI) format covering the project.
- Prepare 60%, 90% and 100% estimates of opinion of probable construction costs.
- Provide customized maintenance instructions and operating plan information needed for inclusion in Smith Canal Closure Structure O&M Manual.
- Perform the hydrologic and hydraulic analyses needed to support USACE permitting.
- Perform the surveying needed to support the engineering design.
- Perform geotechnical explorations along the structure alignment to support the engineering design.

Task 3.0 – Independent Review:

DWR requires an independent review of all projects receiving EIP funds. The Smith Canal closure structure independent review panel will be comprised of three individuals who are distinguished experts in structural engineering, geotechnical engineering, and hydrology/hydraulics. It is SJAFCA's intent to use one independent review panel to meet DWR requirements and to comply with federal guidance.

At a minimum, the independent reviews will consider applicable USACE requirements and DWR's interim levee design criteria. The independent review shall be conducted in an open manner in collaboration with the DWR. SJAFCA will invite DWR to all meetings of the panel and will provide DWR staff the opportunity to collaboratively develop the agenda and questions for each meeting of the panel.

Task 4.0 - CEQA/NEPA Compliance and Permitting

SJAFCA will prepare a project-level Environmental Impact Report (EIR) that is compliant with the California Environmental Quality Act (CEQA) and a project-level Environmental Impact Statement (EIS) that is compliant with the National Environmental Policy Act (NEPA). SJAFCA will also initiate consultation with state and federal agencies for required environmental permits as well as provide environmental support for the project permitting effort. A joint environmental document, meeting the needs of both CEQA and NEPA, will be explored as the compliance approach; however, the draft work plan assumes a conservative case that the NEPA document may sequentially follow the CEQA document.

The key environmental issues associated with the project may include:

- analysis of construction- and operation-related effects on fish from direct mortality and habitat disturbance;
- analysis of construction- and operation-related effects on water quality;
- analysis of construction-related effects on adjacent residences, recreation facilities, and businesses, such as noise, vibration, traffic, air quality, and visual disturbance; and

Following are the tasks that SJAFCA proposes to carry out in order to meet CEQA/NEPA compliance and obtain the required permits for construction and operation of the Smith Canal closure structure.

Task 4.1 Initiate Environmental Process for CEQA/NEPA Document (San Joaquin Area Flood Control Agency and U.S. Army Corps of Engineers) and Permits

The closure structure will require a number of inter-related environmental authorizations. This task will scope and plan those processes, beginning with developing the project description, conducting public scoping, and coordinating with the resource and regulatory authorities to develop a comprehensive compliance approach for efficient approvals. This work will include a number of subtasks, including but not limited to:

- Scoping, Noticing, and Hearings
 - Distribute Notice of Preparation/Notice of Intent
 - Conduct Scoping
 - Conduct Public Hearings
- Develop Project Description and Refine Alternatives
 - Prepare Project Description
 - Refine Alternatives

Task 4.2 Prepare CEQA Document (San Joaquin Area Flood Control Agency as lead agency)

SJAFCA will complete the CEQA compliance needed to adopt all the project's discretionary actions. It is assumed an EIR-level analysis will be required. It is assumed state agencies will use SJAFCA's EIR for their authorizations. This work will include a number of subtasks, including but not limited to:

- Conduct Project-Level Environmental Analysis
- Develop Administrative Draft Environmental Document
 - Introduction
 - Alternatives
 - Affected Environment
 - Hydrology
 - Water Quality
 - Transportation and Navigation
 - Air Quality
 - Noise and Vibration
 - Biological Resources
 - Recreation
 - Economics
 - Population/Housing/Environmental Justice
 - Utilities
 - Visual Resources
 - Public Health/Environmental Health
 - Cultural Resources
 - Environmental Effects
 - Cumulative and Growth-Inducing Effects
 - Compliance with Applicable Laws, Policies, Plans, and Regulatory Framework

- Prepare Public Draft Environmental Document
- Prepare Admin Final Environmental Document
- Prepare Public Final Environmental Document

Task 4.3 Prepare NEPA Document (U.S. Army Corps of Engineers as lead agency)

NEPA compliance will be required for USACE to adopt and approve the project under the Clean Water Action Section 404, and Rivers and Harbors Act Section 10. It is assumed an EIS-level analysis will be required. It is assumed the CEQA document can be substantially reformulated to meet USACE's needs. This work will include a number of subtasks, including but not limited to:

- Develop Administrative Draft Environmental Document
- Prepare Public Draft Environmental Document
- Prepare Admin Final Environmental Document
- Prepare Public Final Environmental Document

Task 4.4 Individual Permit under Clean Water Act (CWA) Section 404 and Rivers & Harbors Act (RHA) Section 10 (U.S. Army Corps of Engineers)

Under Section 404 of the CWA, a permit is required from the USACE for the placement of dredged or fill material into waters of the United States. Under Section 10 of the RHA, a permit is required for effects on navigable waters. Projects may be authorized under existing general permits (e.g., nationwide permits) or may require individual permits. An individual permit is assumed based on the anticipated project features to be constructed in the waters of the United States, specifically the channel of the Smith Canal at the confluence with the San Joaquin River.

SJAFCA will map jurisdictional boundaries within the project area for navigable waters and waters of the United States under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA, respectively.

SJAFCA will draft the permit application materials for a Section 10 and Section 404 individual permit for this project. These materials include a USACE application form, a pre-construction notification, and a mitigation/restoration plan. A complete permit application will require an impact assessment based upon a delineation of waters and project design documents (design with sufficient detail to accurately evaluate project impacts to jurisdictional waters). SJAFCA will coordinate with USACE throughout the process to ensure appropriate compliance documentation.

Task 4.5 Water Quality Certification under CWA Section 401 (Central Valley Regional Quality Control Board)

CWA Section 401 requires that the discharge of dredged or fill material into waters of the United States, including wetlands, does not violate state water quality standards. As required by Section 404 of the CWA, water quality certification from the Regional Water Quality Control Board (RWQCB) must be obtained for permit compliance. The Project will be subject to formal certification rather than a waiver. Project design (i.e. plans and specifications) will include best management practices (BMPs) to ensure avoidance, minimization or mitigation of effects on water quality. Completion of the CEQA process is required before certification may be granted.

SJAFCA will compile the necessary information and submit a complete certification package to the RWQCB. SJAFCA will coordinate with the RWQCB throughout the process to ensure appropriate compliance documentation.

Task 4.6 Authorization under National Endangered Species Act (U.S. Fish and Wildlife Service and National Marine Fisheries Service)

The project is proposed in an area known to have the potential for species and their habitat protected under the federal Endangered Species Act (ESA), as administered by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). ESA compliance is required prior to the issuance of a Section 404 permit.

SJAFCA assumes a Biological Assessment (BA) will need to be prepared to address any potential impacts to federally listed species and issuance of a Biological Opinion (BO) by the federal resource agencies.

SJAFCA will prepare a BA to be submitted to the USFWS and the NMFS to obtain a BO, which is required prior to USACE issuing a Section 404 permit. SJAFCA will coordinate with the USFWS and NMFS throughout the process to ensure compliance documentation.

Task 4.7 Authorization under National Historic Preservation Act Section 106 (U.S. Army Corps of Engineers and State Historic Preservation Office)

The project may affect cultural resources that are listed or are potentially eligible for listing in the National Register of Historic Places and are therefore protected under the federal National Historic Preservation Act (NHPA), Section 106. NHPA compliance is required prior to the issuance of a Section 404 permit.

SJAFCA assumes that resources that are subject to Section 106 compliance will be discovered through the CEQA/NEPA process. It is assumed that no significant resources will be affected.

SJAFCA will conduct a records search and field reconnaissance and will supplement that work with field investigations. SJAFCA will consult with USACE and SHPO to prepare the appropriate documentation for Section 106 compliance. This task includes coordinating with USACE to determine the area of potential effect (APE) and defining the physical limits of USACE's consultation jurisdiction for Section 106.

Task 4.8 Streambed Alteration Agreement under Fish and Game Code Section 1600 and Authorization under California Endangered Species Act (California Department of Fish and Game)

A Streambed Alteration Agreement, in compliance with Section 1600 of the California Fish and Game Code, is required when projects will substantially divert, obstruct or change the natural flow of a river, stream or lake; substantially change the bed, channel, bank of a river, stream or lake; or use material from a streambed. California Endangered Species Act (CESA) compliance is required because the project is proposed in an area known to have the potential for species and their habitat protected by under CESA. CESA compliance, administered by the California Department of Fish and Game (CDFG) is required prior to the issuance of a Streambed Alteration Agreement by CDFG.

At this juncture SJAFCA assumes that there will be no take of state listed species and that preparation of a letter report documenting that assumption and submittal to CDFG will be sufficient to comply with CESA. While not expected, the scope for this task will need to be revisited and expanded if the project design is not able to avoid take of state-listed species, thereby requiring a CESA take permit on

preparation of a Consistency Determination under Section 2080.1 and relying on federal Biological Opinions.

SJAFCA will prepare and submit the application package for the Streambed Alteration Agreement, describing the project features; construction period; construction methods; impacts to vegetation, fish and wildlife; and the proposed monitoring plan.

For the CESA requirements, SJAFCA will identify avoidance or mitigation measures and will prepare a letter report to be submitted to CDFG to obtain their concurrence that the project will have no effect or is not likely to affect listed species. SJAFCA will coordinate with CDFG throughout the process to ensure the appropriate compliance documentation for the Streambed Alteration Agreement and CESA.

Task 4.9 Environmental Support to Obtain Floodway Encroachment Permit under Title 23 of the State Water Code (Central Valley Flood Control Board)

A floodway encroachment permit from the Central Valley Flood Control Board (CVFCB, formerly The Reclamation Board of the State of California) will be required for the closure structure. The permit will require endorsements from USACE and the local maintaining agency.

SJAFCA will prepare a floodway encroachment permit application and supporting documentation required for initiation of project construction. SJAFCA will engage USACE, CVFCB, and the local maintaining agency throughout the process.

Task 4.10 Environmental Support for the Storm Water Pollution Prevention Plan (SWPPP) as part of NPDES Compliance under CWA Section 402 (Regional Water Quality Control Board)

CWA Section 402 regulates discharge to surface waters through the NPDES program, administered by the EPA. In California, the State Water Resources Control Board (SWRCB) is authorized by the EPA to oversee the NPDES program through the RWQCBs. The NPDES program provides for both general permits (those that cover a number of similar or related activities) and individual permits.

The Smith Canal closure project will likely be required to obtain coverage under the NPDES General Permit for Construction Activities (General Construction Permit), which requires the project proponent to file a Notice of Intent (NOI) to discharge storm water and to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must include a site map and a description of proposed construction activities, along with demonstration of compliance with relevant local ordinances and regulations. The SWPPP must also describe the project-specific best management practices (BMPs) that will be implemented to prevent or reduce the discharge of construction-related pollutants, including sediments, into storm water runoff and surface drainage. Permittees are required to conduct monitoring and reporting to ensure that BMPs are correctly implemented and effective in controlling the discharge of construction-related pollutants into storm water runoff. It is assumed that the SWPPP will be prepared by others on behalf of SJAFCA (presumably and typically the construction contractor or a specialized subcontractor).

Task 5.0 Real Estate Acquisition Plan:

Objective: The project may require acquisition of interests in real estate along Dad's Point, within Smith Canal, and at the north bank tie-in point. Additionally SJAFCA may need to acquire access easements through the Stockton Country Club Golf Course to access the closure structure from the north for construction purposes and for long term operations and maintenance purposes. During the design phase

SJAFCA will prepare a plan for acquisition of interests in real estate needed to complete the project. Preparation of this plan will likely require right of way acquisition services, appraisal services, title research, geodetic and cadastral services, environmental site assessment services, legal services, etc. This work will include a number of subtasks, including but not limited to:

- Geodetic services include field surveys, examination of title to all parcels, including obtaining preliminary title reports or litigation guarantees, clearance of exceptions to title, policy of title insurance and the preparation of legal descriptions, maps and deeds.
- Appraisal of all parcels establishing the fair market value.
- Environmental site assessment reports to determine the existence of hazardous and toxic waste materials.
- Preparation of written offer including necessary acquisition documents including purchase funding agreements, maps and deeds for all parcels. SJAFCA will also prepare all other necessary temporary entry permits, rights of entry, borrow and spoil agreements.
- Negotiations for the acquisition of all parcels by deed and contract and/or condemnation. For parcels being acquired by condemnation, an order of possession shall be deemed "acquisition."
- Preparation of memorandums of settlement for transactional review and approval including settlement justification, escrow instructions worksheet and closing.
- Escrow and closing services required to consummate the transactions which are called for in the Funding Agreement, including clearing title at close of escrow, funding and issuance of a policy of title insurance.
- Preparation of a land acquisition final accounting package.

Task 6.0 Public Outreach :

SJAFCA will implement a public outreach program that meets the legal requirements of CEQA/NEPA and provides a means for communication about the project and its impact to the affected stakeholders. SJAFCA will facilitate scoping meetings and public hearings related to the release of the environmental document and also meetings to inform the public regarding the project purpose, need, and schedule.

ARTICLE A-1-A. OVERALL PROJECT BUDGET:

Design Phase Costs		
Task		Cost
1	Program Management (Design Phase)	\$ 709,000
2	Engineering Design	\$ 2,250,000
3	Independent Review	\$ 300,000
4	Environmental Review & Permitting	\$ 1,375,000
5	Real Estate Planning & Acquisition (30% of Total)	\$ 141,000
6	Public Outreach (50% of Total)	<u>\$ 50,000</u>
	Design Phase Total	\$ 4,825,000

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE:

Design Phase Schedule

Activity	Start	Finish
EIP Funding Agreement	January 2012	May 2012
Assessment District Formation	June 2012	December 2012
Consultant Team Selection	June 2012	December 2012
60% Engineering Design	January 2013	June 2013
90% Engineering Design	July 2013	December 2013
100% Engineering Design	January 2014	April 2014
CEQA/NEPA Preparation	January 2013	June 2014
Right of Way Acquisition	January 2014	April 2015
Permitting Acquisition	January 2014	December 2014
Construction	May 2015	October 2016

EXHIBIT B

STANDARD CONDITIONS

B-1 GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

B-2 TIMELINESS: Time is of the essence in this Funding Agreement.

B-3 AMENDMENT: This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

B-4 SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

B-5 AUDITS: State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in paragraph 20 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the Funding Recipient shall be subject to the examination and audit of State for a period of three years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or subcontractors shall be preserved for this purpose for at least three (3) years after Project completion.

B-6 ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a) **Separate Accounting of Funding Disbursements and Interest Records:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.

- c) **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) days of the expiration of the Funding Agreement, which ever comes first.

B-7 COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

B-8 FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement. Funding Recipient shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.

B-9 INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State

B-10 INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests, as provided in paragraph 20.

B-11 ACKNOWLEDGEMENT OF CREDIT: Funding Recipient shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Funding Agreement.

B-12 TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Travel and per diem shall be reimbursed consistent with the rates current at the time of travel. These rates are published at <http://www.dpa.ca.gov/jobinfo/statetravel.shtml> or its successor website. For the purpose of computing such expenses, Funding Recipient's designated headquarters shall be: 22 E Weber Ave, Stockton California, 95202. Room 301. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

B-13 PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: To the extent this clause is applicable to a Design Project Funding Agreement, Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

B-14 STATE TO BE HELD HARMLESS: Funding Recipient shall indemnify and hold harmless the State, its officers, agents, and employees free and harmless from any and all liability from any claims and damages arising from the planning, design, construction, repair, replacement or rehabilitation, maintenance, and operation of this Project and any breach of this Agreement. Funding Recipient shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.

B-15 NO THIRD PARTY RIGHTS: The parties to this Funding Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Funding Agreement, or of any duty, covenant, obligation or undertaking established herein.

B-16 OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

B-17 SUIT ON FUNDING AGREEMENT: Each of the parties hereto may sue and be sued with respect to this Funding Agreement.

B-18 REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

B-19 SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.

B-20 WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

B-21 TERMINATION FOR CAUSE: Subject to the right to cure under paragraph 20, the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to

perform the requirements of this Funding Agreement at the time and in the manner herein provided included but not limited to reason of default under paragraph 20.

B-22 INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

B-23 CONFLICT OF INTEREST:

a) Current State Employees: No State 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. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

b) Former State Employees: 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. 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 twelve-month period prior to his or her leaving State service.

c) Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*

d) Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

B-24 WORKERS' COMPENSATION: Funding Recipient affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Funding Agreement and will make its contractors and subcontractors aware of this provision.

B-25 AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

B-26 NONDISCRIMINATION CLAUSE: During the performance of this Funding Agreement, Funding Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

B-27 DRUG-FREE WORKPLACE CERTIFICATION:

Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - 1. The dangers of drug abuse in the workplace,
 - 2. Funding Recipient's policy of maintaining a drug-free workplace,
 - 3. Any available counseling, rehabilitation, and employee assistance programs, and
 - 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 - 1. Will receive a copy of Funding Recipient's drug-free policy statement, and
 - 2. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

Suspension of Payments: This Funding Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

- a) Funding Recipient, its contractors, or subcontractors have made a false certification, or
- b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.

B-28 UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:

- a) No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
- b) Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
- c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

B-29 BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for the State-Federal Flood Control System Modification Program (Early Implementation Projects), this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.

B-30 COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

B-31 DELIVERY OF INFORMATION, REPORTS AND DATA: Funding Recipient agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.

B-32 RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

B-33 DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than 30 days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$500 per item. Within 60 days of receipt of such inventory State

shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.

B-34 CHILD SUPPORT COMPLIANCE ACT: For any Funding Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:

- a) The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

B-35 PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

B-36 DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this Funding Agreement, under penalty of perjury under the laws of State of California, that Funding Recipient is in compliance with Public Contract Code section 10295.3.

B-37 FUNDING RECIPIENT NAME CHANGE: Approval of the State's Program Manager is required to change the Funding Recipient's name as listed on this Funding Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

B-38 AIR OR WATER POLLUTION VIOLATION: Under State laws, the Funding Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Exhibit C

QUARTERLY WORK PLAN AND REPORT FORMATS

This Exhibit details the requirements for Quarterly Work Plans and Quarterly Progress Reports.

QUARTERLY WORK PLANS:

Quarterly Work Plans shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects contained in the State-Federal Flood Control System Modification Program (Early Implementation Program).

The report should reflect the work plan for completing work over the three months of the next calendar quarter.

QUARTERLY WORK PLAN

Describe the work to be performed during the time period covered by the Quarterly Work Plan including:

PROJECT INFORMATION

- Engineering and design matters;
- Environmental matters;
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies;
- Major accomplishments planned for the quarter (i.e. tasks to be completed, milestones to be met, meetings to be held or attended, etc.);
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter;
- Describe differences between the work to be performed and the work outlined in the Overall Work Plan, including anticipated change orders;
- Any litigation, proceedings or claims relating to the Project.

COST INFORMATION

- Listing showing projected costs that are anticipated during the time period covered by the Quarterly Work Plan by the Funding Recipient and each contractor working on the project, broken down to show individual items and tasks.
- A discussion of how the projected costs compare to the project budget included in the Overall Work Plan;
- A list of any changes planned to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan;
- The amount of advance funds sought from the State pursuant to paragraph 14(c);
- The amount of funds the Funding Recipient intends to expend to meet its funding obligations under the Funding Agreement.

SCHEDULE INFORMATION

- A schedule of activities during the time period covered by the Quarterly Work Plan;

- A discussion on how the projected schedule compares to the original or last reported schedule; and
- A list of any changes anticipated during the time period covered by the Quarterly Work Plan as compared to the latest reported schedule.

QUARTERLY PROGRESS REPORTS:

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects contained in the State-Federal Flood Control System Modification Program (Early Implementation Projects).

The report should reflect the status of all of the projects identified in the Funding Agreement. A brief summary of program status should also be provided.

PROJECT STATUS

For each project, describe the work performed during the time period covered by the report including:

PROJECT INFORMATION

- Legal matters;
- Engineering and design matters;
- Environmental matters;
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies;
- Major accomplishments during the quarter (i.e. tasks completed, milestones met, meetings held or attended, press releases, etc.);
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter;
- Describe differences between the work performed and the work outlined in the Overall Work Plan, including change orders;
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project.

COST INFORMATION

- Listing showing costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the project and which of these costs are Eligible Project Costs;
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan as well as the Quarterly Work Plans;
- A list of any changes approved to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan;

- A discussion of whether there have been any changes to the Funding Recipient's Finance Plan for payment of the Funding Recipient's share of Eligible Project Costs;
- Identify total interest earned on State funds paid as a result of this Funding Agreement.

SCHEDULE INFORMATION

- A schedule showing actual progress verses planned progress;
- A discussion on how the actual schedule is progressing in comparison to the original or last reported schedule; and
- A list of any changes approved to the Schedule in accordance with Funding Agreement and a revised schedule, by task, if changed from latest reported schedule.

PROJECT COMPLETION REPORT

Project Completion Reports shall generally use the following format.

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of ten (10) pages summarizing project information (see report status section below for topics). The Executive Summary should include the following:

- Brief description of work proposed to be done in the original Early Implementation Program application;
- Description of actual work completed and any deviations from the work plan identified in the Funding Agreement;

REPORTS AND/OR PRODUCTS

- Provide a copy of the final design;
- A map and shapefile(s) showing the location of the project, including latitude and longitude datum. (NAD'27 coordinates; UTM10 projection);
- Provide copies of any data collected along with location maps;

COST AND DISPOSITION OF FUNDS INFORMATION

- A list of and copies of all invoices showing:
 - ☐ The date each invoice was submitted to State;
 - ☐ The amount of the invoice;
 - ☐ The date the check was received; and
 - ☐ The amount of the check. (If a check has not been received for the final invoice, then state this in this section).
- A summary of the payments made by the Funding Recipient for meet its cost sharing obligations under this Funding Agreement.
- A summary of final funds disbursement including:

- ☐ Labor cost of personnel of agency/ major consultant /sub-consultants. (Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc.);
- ☐ Any other incurred cost detail; and
- ☐ A statement verifying separate accounting of funding disbursements.
- Summary of project cost including:
 - ☐ Accounting of the cost of project expenditure;
 - ☐ Include all internal and external costs not previously disclosed;
 - ☐ A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION

- A final project schedule showing actual progress verses planned progress;
- Certification by a California Registered Civil Engineer that the project was conducted in accordance with the approved work plan and any approved modifications thereto;
- A copy of the application filed for a determination of eligibility for federal credits or reimbursement and all correspondence with the U.S. Army Corps of Engineers relating to that application and information regarding the status of that application.

Exhibit D

DRAFT RESOLUTION ACCEPTING FUNDS

Resolved by the Board of Directors of the San Joaquin Area Flood Control Agency that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that the funds awarded to San Joaquin Area Flood Control Agency by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled Smith Canal Closure Structure are hereby accepted.

The Executive Director of the San Joaquin Area Flood Control Agency is hereby authorized and directed to sign a Funding Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement.

Passed and adopted at a regular meeting of the Board of Directors of the San Joaquin Area Flood Control Agency

on March 6, 2012.



Authorized Signature: _____

Printed Name: Dale Fritchen

Title: Chairperson

Clerk/Secretary: _____