



22 E. Weber Avenue, Room 301 | Stockton, CA 95202 | (209) 937-7900 | www.sjafca.org

BOARD OF DIRECTORS

<u>City of Stockton</u> Kimberly Warmasley Dan Wright, Vice-Chair Alt. Susan Lenz	<u>Public Member</u> Mike Morowit	<u>San Joaquin County</u> Katherine M. Miller Chuck Winn, Chair Alt. Tom Patti
<u>City of Manteca</u> Jose Nuño Gary Singh	<u>Executive Director</u> Chris Elias	<u>City of Lathrop</u> Paul Akinjo Diane Lazard

BOARD MEETING – In Person

Council Chamber – City Hall

425 N. El Dorado Street, Stockton

THURSDAY, December 16, 2021
9:00 A.M.

1. CALL TO ORDER / ROLL CALL

2. PLEDGE TO FLAG

3. CONSENT ITEMS

3.1) Approve Minutes from the October 14, 2021, Board Meeting

3.2) Authorization to Pay Local Cost Share to the United States Army Corps of Engineers

4. NEW BUSINESS

4.1) SJAFCA Regular Board Meeting Schedule for 2022

4.2) Memorandum of Understanding between Stockton East Water District, the California State Department of Water Resources, and San Joaquin Area Flood Control Agency for the acquisition of borrow material for Lower San Joaquin River TS_30_L

4.3) Memorandum of Understanding between SJAFCA and a local coalition on the combined Paradise Cut Expansion and South Delta Restoration Project

4.4) Funding agreement between the California Department of Water Resources and SJAFCA as project lead on the combined Paradise Cut Expansion and South Delta Restoration Project

5. STRATEGIC PLANNING

6. ORAL REPORT FROM EXECUTIVE DIRECTOR

7. PUBLIC COMMENTS

8. BOARD QUESTIONS, COMMENTS, ACTIONS

9. CLOSED SESSION

9.1) Dominick Gulli v. San Joaquin Area Flood Control Agency
Case No. STK-CV-UWM-2015-0011880

9.2) San Joaquin Area Flood Control Agency v. Stockton Golf and Country Club Case No.
STK-CV-UED-2019-11392

9.3) ANTICIPATED LITIGATION Pursuant to Government Code Section 54956.9(d)(2):
Three potential cases

10. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Board's office at (209) 937-7900 or (209) 937-7115 (fax). Requests must be made one full business day before the start of the meeting.

Agenda Item 3.1

**MINUTES
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
BOARD MEETING OF OCTOBER 14, 2021**

STOCKTON, CALIFORNIA

1. CALL TO ORDER / ROLL CALL 9:06 AM

Roll Call

Present:

Director Akinjo
Director Lazard
Director Morowit
Director Nuño
Director Warmesley
Director Winn
Director Wright

Absent:

Director Miller
Director Singh

2. PLEDGE TO FLAG 9:07 AM

3. DECLARATION OF STATE OF EMERGENCY 9:07 AM

PUBLIC COMMENT

- None

Motion: To approve the Declaration of State of Emergency

Moved by: Director Akinjo, Seconded by Mike Morowit

Vote: Motion carried 7-0

Yes: Director Akinjo, Director Lazard, Director Morowit, Director Nuño, Director Warmesley, Director Winn, Director Wright

Absent: Director Miller, Director Singh

4. PROCLAMATION 9:11 AM

- a. Proclamation recognizing Assemblymember Carlos Villapudua
- b. Remarks by Assemblymember Carlos Villapudua **10:00 AM**

5. CONSENT ITEMS 9:12 AM

- 5.1) Approve minutes from the September 30, 2021, Board meeting

Motion: To approve the minutes from the September 30, 2021 Board meeting

Moved by: Director Wright, Seconded by Director Morowit

Vote: Motion carried 7-0

Yes: Director Akinjo, Director Lazard, Director Morowit, Director Nuño, Director Warmesley, Director Winn, Director Wright

Absent: Director Miller, Director Singh

6. NEW BUSINESS 9:15 AM

Executive Director Elias requested permission from the Board Chair Director Winn to amend the agenda to allow Shellie Lima, Deputy Director of the Office of Emergency Services, to give a presentation. Chair Winn granted permission to proceed.

Shellie Lima, Deputy Director of the Office of Emergency Services (OES) in San Joaquin County, joined the meeting to discuss how OES is supporting our community and to generate and elevate awareness for Flood Preparedness Week.

- 6.1) Information Briefing on the 2022 Central Valley Flood Protection Plan Update
- 6.2) Consultant Service Agreements with Environmental Science Associates and Peterson Brustad Inc for Mossdale Tract Area Urban Food Risk Reduction Study CEQA Support

PUBLIC COMMENT

- Dominick Gulli shared public comments during the meeting for all to hear.

Motion: For authorization to enter into agreement with Environmental Science and Associates to prepare Environmental Impact Report (EIR) in accordance with the CEQA for the Mossdale Tract UFRR Study and for authorization to execute Amendment Number 2 agreement with Peterson Brustad on the Mossdale Tract UFRR Study for the necessary civil engineering data and engineering support to ESA for preparation of EIR.

Moved by: Director Akinjo, Seconded by Director Warmesley

Vote: Motion carried 7-0

Yes: Director Akinjo, Director Lazard, Director Morowit, Director Nuño, Director Warmesley, Director Winn, Director Wright

Absent: Director Miller, Director Singh

7. ORAL REPORT FROM EXECUTIVE DIRECTOR 10:45 AM

- A.) Update on Paradise Cut Expansion and South Delta Restoration Project

PUBLIC COMMENT

- Dominick Gulli shared public comments during the meeting for all to hear.
- Kris Balaji shared public comments during the meeting for all to hear.

8. PUBLIC COMMENTS 11:00 AM

- None

9. BOARD QUESTIONS, COMMENTS, ACTIONS 11:00 AM

- None

10. CLOSED SESSION 11:00 AM

Counsel Shapiro advised that a new matter needed to be added to the agenda as a closed session. He explained that under Government Code section 54954.2(b)(2), the matter could be added by a 2/3rd majority vote of the Board because the matter was not known at the time the agenda was published and it was urgent for the Board to discuss. Upon motion by Director Morowit and seconded by Director Nuño, the Board voted 7-0 in favor of the motion.

Motion: To add new matter to the agenda as a closed session
Moved by: Director Morowit, Seconded by Director Nuño
Vote: Motion carried 7-0
Yes: Director Akinjo, Director Lazard, Director Morowit, Director Nuño, Director Warmesley, Director Winn, Director Wright
Absent: Director Miller, Director Singh

10.1) San Joaquin Area Flood Control Agency v. Stockton Golf and Country Club Case no. STK-CV-UED-2019-11392

- Report Out from Closed Session: Nothing to report.

As a result of the motion, a new agenda item was added as follows:

10.2) Closed session pursuant to Government Code section 54956.9(d)(92): conference with counsel on anticipated litigation as a result of significant exposure.

- Report Out from Closed Session: Board gave direction to Counsel.

11. ADJOURNMENT 12:16 PM

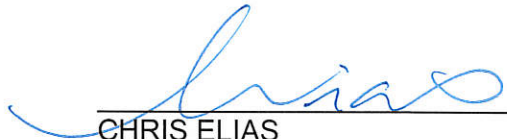
The meeting adjourned at 11:31 AM. The next meeting is scheduled for December 16, 2021, at 9:00 AM.

IMPORTANT NOTICE

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Order N-29-20 issued on March 17, 2020, that allows attendance by members of the Board of Directors, District Staff, and the public to participate and conduct the meeting by teleconference, or both.

Members of the public wishing to address the Board during a video conferenced meeting on an item not listed on the agenda, or any item listed on the agenda, should use the "Raise Hand" tool located in Zoom meeting like listed on the agenda. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

The San Joaquin Area Flood Control Agency, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in SJAFCA's Board meetings to please contact staff at (209) 937-211, at least one day before the scheduled SJAFCA Board Meeting to ensure that the Agency



CHRIS ELIAS
EXECUTIVE DIRECTOR
SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

October 14, 2021 SJAFCA Meeting Minutes

Agenda Item 3.2

TO: Board of Directors

December 16, 2021

FROM: Chris Elias, Executive Director

SUBJECT: **AUTHORIZATION TO PAY LOCAL COST SHARE TO THE UNITED STATES
ARMY CORPS OF ENGINEERS**

RECOMMENDATIONS

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency (SJAFCA):

Appropriate and authorize the Executive Director to pay the United States Army Corps of Engineers (USACE) the sum of \$154,052 being the first quarterly local cost share related to implementation of the Project Partnership Agreement for design and construction of Lower San Joaquin River Project, Phase I.

DISCUSSION

Synopsis

In June 2021, the Board approved SJAFCA's budget for Fiscal Year 2020/2021, including a \$3.14 million allocated to Lower San Joaquin River Federal Project. USACE has informed SJAFCA and the State of California that it will be requesting the sum of \$154,052 (SJAFCA's share) within days to fund the continued design of the federal project and advance the first increment to construction in summer 2022. The first quarter payment will be due and payable by the end of December. In anticipation of USACE's final request letter which will make the payment due before the January Board meeting, staff is recommending the Board appropriate and authorize the payment of \$154,052 to USACE when due.

Background

In 2009, SJAFCA and the Corps entered into a \$10.7 million Feasibility Cost-Share Agreement for the Lower San Joaquin River Feasibility Study (Study) which was completed in 2018. The agreement was amended in 2010 to include the Central Valley Flood Protection Board (CVFPB), represented by the State Department of Water Resources (DWR), as an additional nonfederal sponsor. The Study evaluated flood protection alternatives for the urban areas of Stockton, Lathrop, Manteca, and surrounding unincorporated areas of San Joaquin County. Information from the Study was used to (i) develop a plan to reach 200-year levels of flood protection for urban and urbanizing areas as required by State Senate Bill 5, (ii) quantify "Federal Interest", (iii) provide nexus for Federal crediting (a requirement of the State for bond funding), and (iv) spin off early implementation projects which can utilize State bond funding, such as the Smith Canal Gate Project.

In November 2018, SJAFCA entered into a three-way Design Agreement (DA) with USACE and CVFPB in the amount of \$8.84 million for the first Phase of the design of the project, which is still underway. The cost share for the DA was 65% Federal and 35% local. The Corps will be funding \$5,740,000, and the Locals \$3,100,000. The local share between SJAFCA and the CVFPB (the non-federal sponsors) is split on a 70/30 basis: CVFPB will cover 70% or \$2,170,000, and SJAFCA is obligated to pay 30% or \$930,000.

In September 2020, representatives from USACE, CVFPB and SJAFCA executed a Project Partnership Agreement to provide critically needed improvements to reduce flood risk in the second largest metropolitan area of Central Valley. The structural features of the plan include approximately 24 miles of levee improvements, and two closure structures (Fourteen-mile Slough and Smith Canal). The non-structural measures include a comprehensive flood warning system, emergency evacuation planning and floodplain management. The project is estimated to cost \$1.39 billion with annual benefits of \$255 million.

Present Situation

Currently USACE is completing design of the first planned reach TS30L, located along Tenmile Slough between West March Lane and White Slough west of Interstate 5, and beginning geotechnical analysis and pre-design for up to 10 additional reaches. The first increment is also scheduled to be advertised and begin construction in 2022. Making the payment requested by the USACE as outlined in the table below would allow the federal government to continue to advance the project toward construction and designs of the remaining reaches of the Lower San Joaquin River project. Therefore, staff recommends the Board to appropriate and authorize the Executive Director to pay USACE the sum of \$154,052 being the first quarterly local cost share related to implementation of the Project Partnership Agreement for design and construction of Lower San Joaquin River Project, Phase I.

FISCAL IMPACT

The Lower San Joaquin Project, Phase I is a USACE project. The improvements are cost-shared by the federal and non-federal sponsors. Estimated cost share amounts are outlined below, based on the figures provided by USACE.

Table I --- Overall Cost of the Lower San Joaquin River Project, Phase I

Entity	% Share	Cost Share Amount
USACE	65	\$900,433,950
CVFPB	24.5	\$339,394,335
SJAFCA	10.5	\$145,454,715
Total	100	\$1,385,283,000

Meanwhile, USACE has requested the State and SJAFCA to contribute a portion of the non-federal sponsor payment. Attached is a more detailed breakdown of the funds request, which is summarized below, based on a 70/30 percent cost-share ratio of expenditures. The Board's action today allows SJAFCA to appropriate and make its first quarter payment pursuant to Project Partnership Agreement signed in 2020, the provision of which allows USACE to request non-federal sponsors for cash contribution as the project advances:

Table 2 – Cost-share Breakdown Between the State of California and SJAFCA (including catch up)

FY22 Funding	DWR	SJAFCA	TOTAL
Q1	\$156,148	\$154,052	\$ 310,200
Q2	\$1,204,183	\$1,188,017	\$2,392,200
Q3	\$143,815	\$141,885	\$ 285,700
Q4	\$223,953	\$220,947	\$ 444,900
TOTAL	\$1,728,100	\$1,704,900	\$3,433,000

STRATEGIC PLAN CONSISTENCY ANALYSIS

Consideration of this request for authorization of the Executive Director to make payments in compliance with the terms of the Project Partnership Agreement to implement the Mission and Goals of the Board-adopted Strategic Plan. Specifically, it is consistent with the Agency mission statement of "Reduce and Manage the Region's Flood Risk", Goal #1, Plan for and Implement System Resiliency; Goal #3, Facilitate Funding Structures That Are Most Beneficial to Local Interests; and Goal #4, Support Appropriate, Mutually Beneficial Partnerships.



CHRIS ELIAS
EXECUTIVE DIRECTOR

Attachments:

1. Draft funding request letter from United States Army Corps of Engineers for Project Partnership Agreement for Lower San Joaquin River Federal California Project for the non-Federal Cost Share
2. Draft Resolution to Appropriate and Authorize Executive Director to Pay Local Cost Share to the U.S. Army Corps of Engineers



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

Programs and Project Management Division

Ms. Leslie Gallagher, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, CA 95821

Mr. Chris Elias, Executive Director
San Joaquin Area Flood Control Agency
22 E. Weber Avenue, Room 301
Stockton, CA 95202-2317

Dear Lower San Joaquin Project Sponsors:

As set forth in the Project Partnership Agreement (PPA) for the San Joaquin River Basin, Lower San Joaquin River, CA Project dated September 30, 2020, the Sacramento District requests the non-Federal sponsor portion of the project's funding.

Based on the current total fully funded construction cost of \$1,385,283,000, per the PPA, the estimated required Federal cash contribution is \$900,433,950 and the non-Federal sponsor cash contribution is \$188,056,050 while the non-Federal non-cash contribution is \$296,763,000; costs shared 65% Federal and 35% non-Federal.

To date, the project has received Federal cash contributions in the amount of \$42,800,000.

Cash requested for FY22:

1 st Quarter:	\$310,200
2 nd Quarter:	\$2,392,200
3 rd Quarter:	\$285,700
4 th Quarter:	\$444,900

Total non-Federal balance due for FY22: \$3,433,000.

DRAFT

This funding request letter supersedes the letter that the Sacramento District sent earlier this calendar year. If you have any questions regarding the financial analysis or the cash contribution computation for this request, please contact Mr. Paul White, Budget Analyst, at (916) 557-7438 or paul.m.white@usace.army.mil.

If you have any questions, please contact Mr. Patrick Howell, Project Manager, at (916) 557-6784 or via email at Patrick.Howell3@usace.army.mil. You may also contact Mr. Mark Hall, Project Manager, at (916) 557-7867 or via email at Mark.W.Hall@usace.army.mil.

Sincerely,

COWAN.NICOLA
SA.1231803277

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Date: 2021.11.24 10:28:21 -08'00'

Nicole Cowan
Chief, Programs and Project Support Branch
PPMD, USAED Sacramento

Enclosure

cc:

Mr. Omar Al-Hindi
Executive Project Manager
San Joaquin Area Flood Control Agency
22 E. Weber Avenue, Room 301
Stockton, CA 95202-2317

Mr. Larry Ito, P.E., PMP
Water Resources Engineer
Flood Risk Reduction Projects Branch
Flood Projects Office
Division of Flood Management
Department of Water Resources
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821-9000

SIAFCA TS30L Status Update
Original Contract, Amendment 1 and Amendment 2
ESA - D201901301.00 and .01
12/7/21

ATTACHMENT 2

RESOLUTION NO. SJAFCA 21-18

**SAN JOAQUIN AREA
FLOOD CONTROL AGENCY**

=====

**RESOLUTION TO APPROPRIATE AND AUTHORIZE PAYMENT OF LOCAL COST SHARE
TO THE U.S. ARMY CORPS OF ENGINEERS**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD
CONTROL AGENCY, AS FOLLOWS:

Appropriate and authorize the Executive Director to pay the United States Army Corps of
Engineers (USACE) the sum of \$154,052 being the first quarterly local cost share related
to implementation of the Project Partnership Agreement for design and construction of
Lower San Joaquin River Project, Phase I.

PASSED, APPROVED AND ADOPTED this 16th day of December 2021

CHUCK WINN, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

CHRIS ELIAS, EXECUTIVE DIRECTOR
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:

SCOTT L. SHAPIRO, Legal Counsel
For the San Joaquin Area
Flood Control Agency

Agenda Item 4.1

December 16, 2021

TO: San Joaquin Area Flood Control Agency
FROM: Chris Elias, Executive Director
SUBJECT: **SJAFCA REGULAR BOARD MEETING SCHEDULE FOR 2022**

RECOMMENDATION

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency accept the 2022 monthly meeting schedule.

DISCUSSION

Background

On January 26, 2011, the SJAFCA Board approved a resolution setting future regular Board meeting on a bi-monthly basis. The resolution also states that future Board meetings schedules will be presented no later than January of each year, and that Special Board meetings will be held, as necessary.

Throughout the course of 2020 and 2021, SJAFCA Board meetings were held monthly via video conferencing.

Present Situation

It is recommended the Board of Directors of the San Joaquin Area Flood Control Agency accept and approve the resolution for the 2022 Board Meeting Schedule.

PREPARED BY: Leanne Randall

APPROVED BY:



Chris Elias
Executive Director

Attachment:

1. Draft SJAFCA's Board meeting Schedule

2022

SJAFCA's Board Meeting Schedule

- January 27, 2022
- February 17, 2022
- March 17, 2022
- April 21, 2022
- May 26, 2022
- June 16, 2022
- July 21, 2022
- August 18, 2022
- September 15, 2022
- October 20, 2022
- November 2022
–Off/No Meeting
- December 15, 2022

RESOLUTION NO. SJAFCA 21-19

**SAN JOAQUIN AREA
FLOOD CONTROL AGENCY**

=====

RESOLUTION SETTING THE BOARD MEETING SCHEDULE FOR 2022

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

Regular Board meetings for 2022 are scheduled at 9:00 a.m. to be held at 425 N. El Dorado Street, Second Floor, Council Chambers, on the following dates:

- | | | |
|---------------------|-------------------|-------------------------------------|
| • January 27, 2022 | • May 26, 2022 | • September 15, 2022 |
| • February 17, 2022 | • June 16, 2022 | • October 20, 2022 |
| • March 17, 2022 | • July 21, 2022 | • November 2022 –
Off/No Meeting |
| • April 21, 2022 | • August 18, 2022 | • December 15, 2022 |

PASSED, APPROVED AND ADOPTED this 16th day of December 2021

CHUCK WINN, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

CHRIS ELIAS, EXECUTIVE DIRECTOR
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:

SCOTT L. SHAPIRO, Legal Counsel
For the San Joaquin Area
Flood Control Agency

Agenda Item 4.2

December 16, 2021

TO: San Joaquin Area Flood Control Agency

FROM: Chris Elias, Executive Director

SUBJECT: **MEMORANDUM OF UNDERSTANDING BETWEEN STOCKTON EAST WATER DISTRICT, THE CALIFORNIA STATE DEPARTMENT OF WATER RESOURCES, AND SAN JOAQUIN AREA FLOOD CONTROL AGENCY FOR THE ACQUISITION OF BORROW MATERIAL TO CONSTRUCT A NEW LOWER SAN JOAQUIN RIVER LEVEE-TENMILE SLOUGH TS30L**

RECOMMENDATION

It is recommended the Board of Directors of the San Joaquin Area Flood Control Agency authorize the Executive Director to execute a memorandum of understanding (MOU) with Stockton East Water District (SEWD), California State Department of Water Resources (DWR) and the San Joaquin Flood Control Agency (SJAFCA) for the acquisition of borrow material to construct a new Lower San Joaquin River levee at Tenmile slough TS30L.

DISCUSSION

Background

SJAFCA, DWR and the U.S. Army Corps of Engineers (USACE) have been working with SEWD in developing a memorandum of understanding for the acquisition of borrow material for the Lower San Joaquin River project. The service SEWD provides to their clients is delivery of surface water for agricultural irrigation and the treatment of surface water for wholesale of potable water to City of Stockton, California Water Service Company, and San Joaquin County.

SEWD owns a 200+ acre site north of the water treatment plant for the installation and management of groundwater recharge basins to support groundwater sustainability for the Eastern San Joaquin Groundwater Subbasin, in support of the Sustainable Groundwater Management Act. When SJAFCA contacted SEWD on July 7, 2020, about potential partnership for borrow material, SEWD re-considered the 100 acres recharge basin as a potential borrow site for SJAFCA and the LSJR Project.

On October 23, 2020, SEWD granted the SJAFCA and USACE a right-of-entry (ROE) for survey and exploration work through October 31, 2022, as amended. On August 19, 2021, the USACE soil exploration consultant (Blackburn Inc.) excavated 9 test pits. Testing done is to confirm that SEWD borrow site material is viable material to be used on the Lower San Joaquin River project.

Present Situation

USACE is currently working on completing the 100% design for phase 1 of the Lower San Joaquin River project. It is anticipated that the 100% design submittal will be provided to SJAFCA and DWR in February 2022. USACE's consultant will be doing the final geotechnical exploration testing between November 30 and December 3, 2021. The initial testing has shown that the borrow site material meets the design requirements for the levee fill. The LSJRP TS30L phase 1 is tentatively planned to start construction in summer 2022.

DWR will be funding the purchase of the borrow material for the first phase of construction. For subsequent phases and prior to the use of additional borrow material from the SEWD site, staff will bring to this board a resolution to approve financial compensation for the use of the borrow material, as outlined in the attached MOU.

It is recommended the Board of Directors of the San Joaquin Area Flood Control Agency adopt a resolution authorizing the Executive Director to sign a memorandum of understanding (MOU) with Stockton East Water District, California State Department of Water Resources and the San Joaquin Flood Control Agency for the acquisition of borrow material.

FISCAL IMPACT

There is no immediate fiscal impact with approving this MOU. Future borrow phases that require SJAFCA funding will be brought before this board.

Strategic Plan Consistency Analysis

The material found in this report is consistent with the Mission and Goals of the Board-adopted Strategic Plan, specifically Goal #1 to Plan for and Implement System Resiliency.

PREPARED BY: Omar Al-Hindi



APPROVED:
CHRIS ELIAS
EXECUTIVE DIRECTOR

Attachments

1. Memorandum of Understanding SEWD-DWR-SJAFCA for LSJRP TS30L phase 1
2. Haul Route Map
3. Project Location Map

**MEMORANDUM OF UNDERSTANDING
BETWEEN STOCKTON EAST WATER DISTRICT, SAN JOAQUIN AREA FLOOD
CONTROL AGENCY, AND THE STATE OF CALIFORNIA DEPARTMENT OF WATER
RESOURCES FOR THE ACQUISITION OF BORROW MATERIAL TO CONSTRUCT A
NEW LOWER SAN JOAQUIN RIVER LEVEE-TENMILE SLOUGH TS30L**

This Memorandum of Understanding ("**MOU**") is made and entered into on this ____ day of _____, 2021, by and between the STOCKTON EAST WATER DISTRICT ("**District** or **SEWD**"), the State of California DEPARTMENT OF WATER RESOURCES ("**DWR**") and SAN JOAQUIN AREA FLOOD CONTROL AGENCY ("**SJAFCA**"), collectively referred to as "**Parties**," Or individually as "**Party**."

WHEREAS, SEWD is a district, formed in 1948 under a special act of the Legislature and the Water Conservation Act of the State of California, and is an independent political subdivision of the state government; and

WHEREAS, SJAFCA is a Joint Powers Authority, formed in May 1995 between the City of Stockton, San Joaquin County and the San Joaquin County Flood Control and Water Conservation District for the purpose of addressing flood protection for the City of Stockton and surrounding County area. On November 16, 2017, the Joint Exercise of Powers Agreement was expanded to include the Cities of Lathrop and Manteca as well as the City of Stockton and San Joaquin County; and

WHEREAS, SJAFCA is working in partnership with **DWR** and the United States Army Corps of Engineers ("**USACE**") on the Lower San Joaquin River Project, Tenmile Slough TS30L ("**Project**"); and

WHEREAS, DWR is acting as the Non-Federal Sponsor to assist in the procurement of borrow material for the first reach Site TS30L; and

WHEREAS, SEWD owns real property suitable for groundwater recharge more particularly identified in the map attached as **EXHIBIT A** ("**Borrow Site**"), that it wishes to excavate to create additional groundwater recharge capacity; and

WHEREAS, the soils from the Borrow Site can be used by USACE for the construction of Project TS30L and remaining reaches, SJAFCA is desirous of USACE performing the excavation for the joint benefit of SJAFCA and SEWD; and

WHEREAS, the Borrow Pit consists of 95 acres, and will be excavated in eleven (11) phases. The first phase of the Project requires excavation of lots 1 and 2 as shown on the attached phasing plan with an estimated 165,000 cubic yards of borrow material; and

WHEREAS, DWR has agreed to pay SEWD for the acquisition of lots 1 and 2 as shown on the attached phasing plan with an estimated 165,000 cubic yards of borrow material at two dollars for each cubic yard to be applied specifically to TS30L; and

WHEREAS, SEWD understands that the Borrow Site will be excavated by USACE in phases, and that the phasing period between each phase of the Project will vary depending on the complexity of each phase; and

WHEREAS, Phase 1 of the Project is planned to go into construction in year 2022 and is expected to excavate ten (10) acres of the Borrow Pit, which borrow material will be sourced solely for Tenmile slough TS30L reach of the Project, and

WHEREAS, the second phase of the Project, Phase 2, is planned to occur within two (2) to three (3) years from the completion date of Phase 1; and

WHEREAS, the entire Project requires approximately 1.4 million cubic yards of borrow material from all eleven (11) phases of levee construction.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this MOU, the Parties agree as follows:

1. **TERM.** The term of this MOU shall begin upon execution, and continue in effect until September 30, 2032, unless earlier terminated in accordance with this Section ("**Term**"). Either Party shall have the right to terminate this agreement upon ninety (90) days prior written notice to the other Party.

2. **RIGHT TO TAKE/EXCAVATE.** SEWD hereby grants to SJAFCA and its assigns, including USACE the right to enter the Borrow Site with all the necessary equipment to excavate, remove and take possession of all borrow material from the Borrow Site ("**Borrow Material**") for use in the construction of the Project.

3. PURCHASE PRICE.

A. DWR shall pay SEWD for the acquisition of approximately ten (10) acres or 165,000 cubic yards of borrow material for Phase 1 in the amount of two dollars (\$2.00) for each cubic yard of Borrow Material taken to be applied specifically to TS30L for a total not-to-exceed amount of \$330,000 (three hundred thirty thousand dollars and zero cents). DWR is only obligated to pay for borrow material actually removed.

B. Payment to SEWD will be based on the actual amount of material removed from SEWD's property. DWR will make every effort to pay SEWD within thirty (30) days of receipt of invoice. SEWD shall submit an invoice to STATE via email pursuant to Section 9A.

C. For activities specifically related to Phase 2 through 11 SJAFCA shall pay SEWD two dollars (\$2.00) for each cubic yard of Borrow Material taken ("**Purchase Price**"). The Purchase Price shall remain at a base of two dollars (\$2.00) for each cubic yard of borrow material taken plus adjustment based on negotiations of the phase requirements at that time.

4. **NO WARRANTY.** SEWD makes no representation that the Borrow Material is suitable for the construction of the Project levees, or for any other purpose that SJAFCA may utilize such materials. SEWD will provide SJAFCA with access for testing of Borrow Material subject to prior written notice to SEWD and upon compliance with reasonable conditions established by SEWD.

5. PHASING OF EXCAVATION.

A. The Parties agree that SJAFCA will excavate the Borrow Site in phases during the Term. The Phases are designated on the map attached as **EXHIBIT A**. No change will be made to the order of the Phases without the express prior written consent of the Parties.

B. Each phase shall be excavated by the contractor in a manner that is consistent with the design provided by the District and conducive to groundwater recharge during the periods between each phase.

6. **NOTICE.** No Borrow Material shall be removed until prior written notice is provided to SEWD. SJAFCA shall comply with any and all reasonable conditions imposed by SEWD as to the time and manner of removal so as to avoid conflicts with SEWD's ownership, operation and maintenance of its facilities.

7. **INDEMNIFICATION.** SJAFCA agrees to indemnify, defend and hold harmless SEWD, its agents, officers, employees and directors from any and all claims of any kind arising directly or indirectly from the Parties' performance under this MOU.

8. **TERMS AND CONDITIONS.** SJAFCA will undertake, or cause its contractor to undertake, the following as a condition of this MOU:

A. Maintain the Borrow Site and the haul route dust free at all times protecting surrounding orchards and county roadways.

B. Conduct all activities between 8:00 a.m. to 4:30 p.m.

C. Maintain all gates locked at the end of each day prior to leaving the Borrow Site and shall be responsible for security anytime during the working hours when the gates are left unlocked.

D. Shall coordinate the work on a daily basis with the current SEWD tenant on the Borrow Site.

E. Shall use the approved haul route designated by SEWD off Cardinal Avenue.

F. Maintain the existing irrigation lines identified in **EXHIBIT A** until the final phases of excavation.

G. The excavated borrow site must be at a 400 linear foot offset from the Stockton Diverting Canal.

H. The interim excavated ground water charging pit must include minimum Cal OSHA safety slopes to support adjacent loading from farm equipment, the excavated area will allow for ground water re-charge between each phase, the excavated area will not erode or slough during rainstorms.

I. The ultimate excavated ground water charging pit must include 3:1 slopes, twelve (12) foot wide access perimeter road rock with compacted class II aggregate base, three ramps

II

will be installed at the northeasterly, northwesterly and southeasterly corners of the new excavated ground water charging pit.

9. MISCELLANEOUS.

A. Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or if an email address is provided, sent by electronic transmission (subject to confirmation of such transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one (1) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses as such Party may subsequently designate to the other Parties by notice given hereunder:

To SJAFCA: San Joaquin Area Flood Co
 22 E. Weber Ave #301
 Stockton, CA 95202
 Attention: Omar Al-Hindi, Executive Project Manager
 Email: omar.al-hindi@stocktonca.gov
 Phone: (209) 937-8525

To SEWD: Stockton East Water District
 Post Office Box 5157
 6767 East Main Street
 Stockton, CA 95205
 Attention: Scott Moody, General Manager
 Email: smoody@sewd.net
 Phone: 209.948.0333

To DWR: California State Department of Water Resources
 715 P. Street 4th Floor
 Real Estate Branch
 Attention: Brian Ferrero, Associate Right-of-Way Agent
 Email: brian.ferrero@water.ca.gov
 Phone: (916) 654-7560

B. Entire Agreement. This MOU represents the entire agreement between the Parties with respect to the subject matter and supersedes all other prior agreements. This MOU may only be modified by a written instrument signed by both Parties.

C. No Waiver. No consent or waiver by either Party to or of any breach of any representation, covenant or warranty will be construed as a consent to or waiver of any other breach of the same or any other representation, covenant, or warranty.

11

D. Counterparts and Facsimile Signatures. This MOU may be executed in two or more counterparts and when so executed shall have the same force and affect as though all signatures appeared in one document. A facsimile or electronic signature of this MOU shall be considered an original signature of this MOU for all purposes.

E. Authority. Each individual executing this MOU on behalf of their Party represents and warrants to the other Party that their execution and delivery of this MOU and all related documents on behalf of the Party for whom they are signing has been duly authorized.

F. Partial Invalidity. If any term or provision of this MOU be, to any extent, invalid or unenforceable, the remainder of this MOU will not be affected thereby, and each such term and provision of this MOU will be valid and be enforced to the fullest extent permitted by law.

G. Time is of the Essence. Time is of the essence in this MOU.

Executed as of the ____ day and month of _____, 2021

SIGNATURES CONTAINED ON FOLLOWING PAGE

Exhibit A:
Map of Borrow Pit and Phases

STOCKTON EAST WATER DISTRICT

By: _____
Scot Moody, General Manager

SAN JOAQUIN AREA FLOOD CONTROL

By: _____
Chris Elias, Executive Director

Approved as to Form:

By: _____
Scott L. Shapiro, General Counsel

DEPARTMENT OF WATER RESOURCES

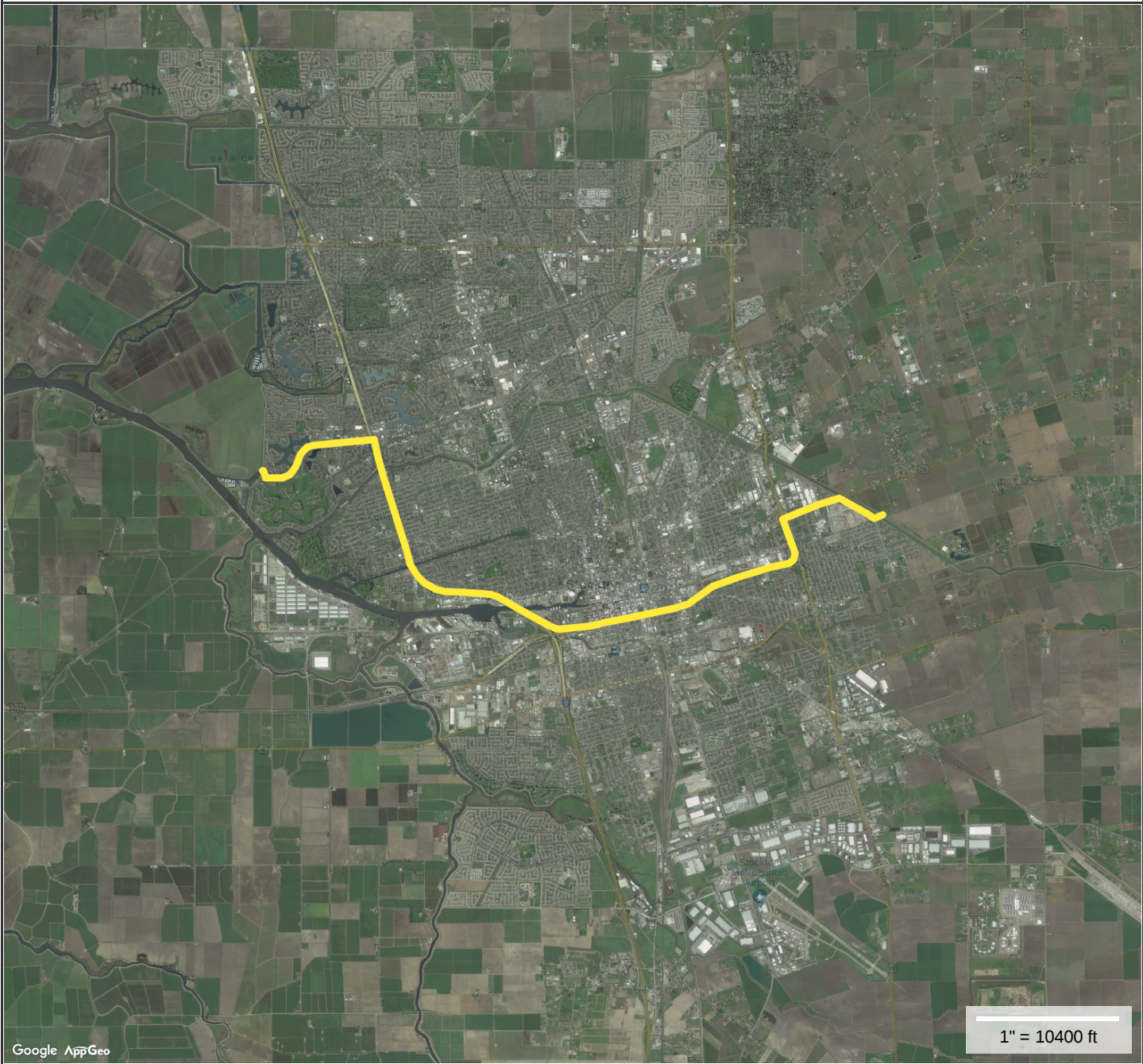
By: _____
Angelica Aguilar, Manager
Real Estate Branch

By: _____
Rachel Taylor, Attorney

EXHIBIT A MAP OF BORROW PIT AND PHASES



SEWD Haul Route



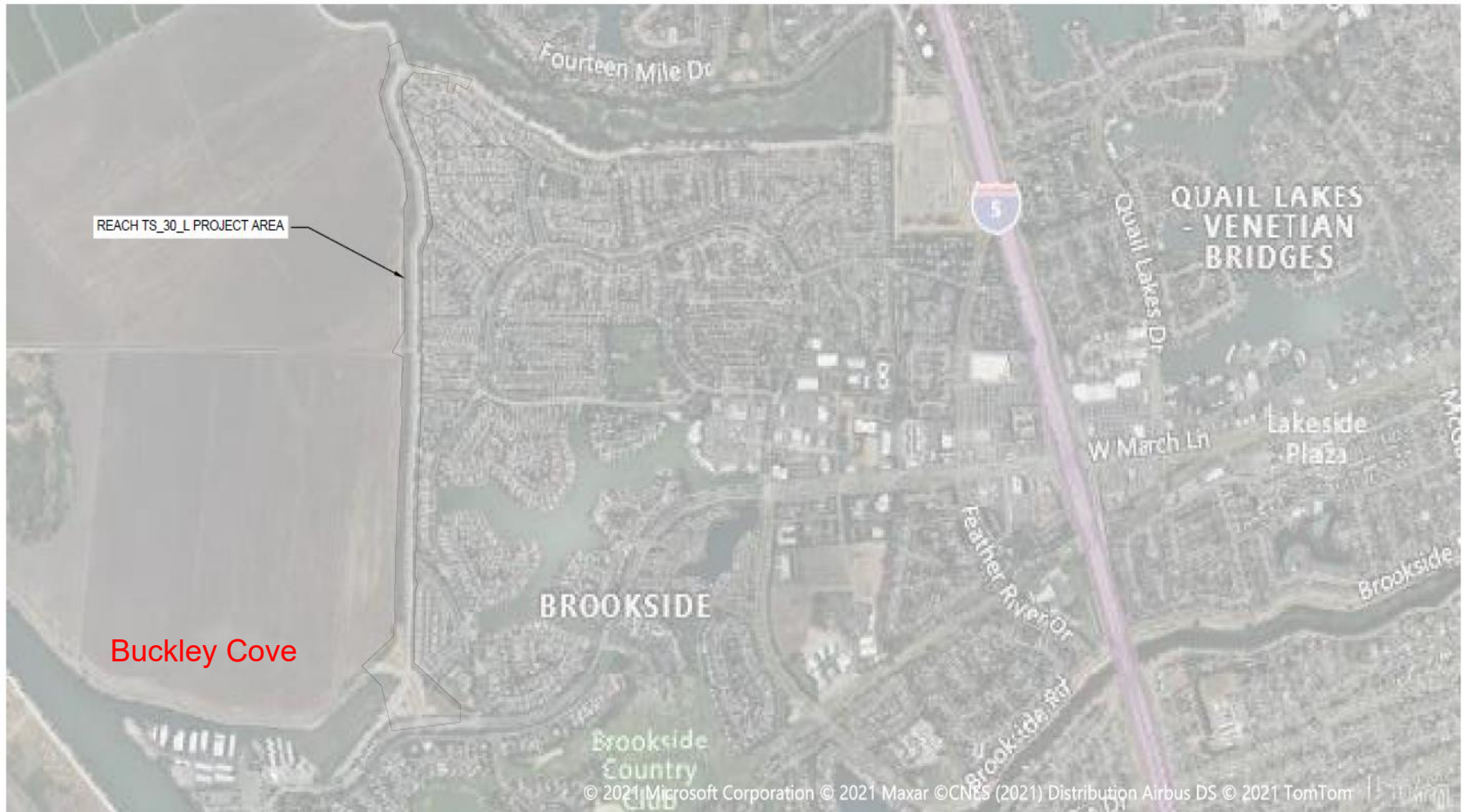
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Stockton, CA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 08/04/2021
Data updated 08/02/2021

Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

LOWER SAN JOAQUIN RIVER_TENMILE SLOUGH_TS30L PROJECT LOCATION MAP



RESOLUTION NO. SJAFCA 21-20

**SAN JOAQUIN AREA
FLOOD CONTROL AGENCY**

=====

AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN STOCKTON EAST WATER DISTRICT (SEWD), THE CALIFORNIA STATE DEPARTMENT OF WATER RESOURCES (DWR) AND SAN JOAQUIN AREA FLOOD CONTROL AGENCY (SJAFCA) FOR THE ACQUISITION OF BORROW MATERIAL TO CONSTRUCT A NEW LOWER SAN JOAQUIN RIVER LEVEE – TENMILE SLOUGH TS30L

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

Authorize the Executive Director to execute the memorandum of understanding between SEWD, DWR and SJAFCA for the acquisition of borrow material to construct a new Lower San Joaquin River levee, Tenmile slough TS30L.

PASSED, APPROVED AND ADOPTED this 16th day of December 2021.

CHUCK WINN, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

CHRIS ELIAS, Executive Director
of the San Joaquin Area
Flood Control Agency.

APPROVED AS TO FORM:

SCOTT L. SHAPIRO, Legal Counsel
for the San Joaquin Area
Flood Control Agency

Agenda Item 4.3

TO: Board of Directors

December 16, 2021

FROM: Chris Elias, Executive Director

SUBJECT: **MEMORANDUM OF UNDERSTANDING BETWEEN SJAFCA AND A LOCAL COALITION ON THE COMBINED PARADISE CUT EXPANSION AND SOUTH DELTA RESTORATION PROJECT**

RECOMMENDATIONS:

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency authorize the Chairman of the Board to sign a memorandum of Understanding (MOU) affirming the San Joaquin Area Flood Control Agency (SJAFCA) as Project Lead on the combined Paradise Cut Expansion and South Delta Restoration Project (Paradise Cut), after the MOU has been executed by designated representatives of the South Delta Water Agency, American Rivers, the San Joaquin County Resource Conservation District, and at least two of the South Delta reclamation districts..

DISCUSSION

Background

On September 30, 2021, the Board received information from staff and representatives of a local coalition working on the planning of the combined Paradise Cut Project. The local coalition includes American Rivers, San Joaquin County Resource Conservation District, South Delta Water Agency, Reclamation District 1, Reclamation District 2, Reclamation District 17, Reclamation District 404, Reclamation District 524, Reclamation District 544, Reclamation District 684, Reclamation District 773, Reclamation District 828, Reclamation District 1007, Reclamation District 2058, Reclamation District 2062, Reclamation District 2064, Reclamation District 2075, Reclamation District 2085, Reclamation District 2089, Reclamation District 2094, Reclamation District 2095, Reclamation District 2096, Reclamation District 2101, and Reclamation District 2107.

To affirm their support for SJAFCA as Project Lead, representatives of the South Delta Water Agency, American Rivers, the San Joaquin County Resource Conservation District, and at least two of the Reclamation Districts would first sign onto an MOU and participate in an advisory committee to be set up by SJAFCA for purposes of advising the Board on the effort.

Present Situation

Once the MOU has been executed by representatives of the coalition listed above, it will be ready for execution by the SJAFCA Chairman of the Board. The MOU is in circulation for signature but has not been signed by all the other parties.

Staff recommends the Chairman of the Board to sign the MOU after it has been executed by designated representatives of the South Delta Water Agency, American Rivers, the San Joaquin County Resource Conservation District, and at least two of the South Delta reclamation districts. The MOU is hereby attached (Attachment 1).

FISCAL IMPACT

There is no fiscal impact resulting from the authorization of the Chairman of the Board to sign the MOU on behalf of the Board of Directors.

STRATEGIC PLAN CONSISTENCY ANALYSIS

Consideration of this request for authorization of the Board Chair to sign the MOU is consistent with the Mission and Goals of the Board-adopted Strategic Plan. Specifically, it is consistent with the Agency mission statement of "Reduce and Manage the Region's Flood Risk", Goal #1, Plan for and Implement System Resiliency; Goal #3, Facilitate Funding Structures That Are Most Beneficial to Local Interests; and Goal #4, Support Appropriate, Mutually Beneficial Partnerships.

A handwritten signature in blue ink, appearing to read "Chris Elias", is written over a horizontal line.

CHRIS ELIAS
EXECUTIVE DIRECTOR

Attachments:

1. Draft Memorandum of Understanding – Paradise Cut Expansion and South Delta Restoration Project
2. Draft Resolution authorizing the Chairman of the Board to sign a draft Memorandum of Understanding once it has been executed by the coalition working on the planning of the combined Paradise Cut Expansion and South Delta Restoration Project

MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding (the “MOU”) is entered into by and between the San Joaquin Area Flood Control Agency (“SJAFA”), American Rivers, San Joaquin County Resource Conservation District, South Delta Water Agency, and the executing Reclamation Districts located in the South Delta on Attachment “A” (collectively, the “Parties”). This MOU shall be effective upon execution by the SJAFA, American Rivers, San Joaquin County Resource Conservation District, South Delta Water Agency, and at least two of the Reclamation Districts on Attachment “A” (the “Effective Date”).

DEFINITIONS

INVESTIGATION – For the purposes of this MOU, the term “Investigation” refers to a study of the technical and financial feasibility of a proposed Project (as defined below).

PROJECT – For the purposes of this MOU, the term “Project” refers to a comprehensive and integrated effort to achieve (i) a Paradise Cut expansion for improved flood control and environmental restoration and (ii) a downstream channel restoration for water supply reliability and environmental restoration. The Project has been titled “Paradise Cut Expansion and South Delta Restoration Project” in other documents.

RECITALS

WHEREAS, the Investigation would aim to develop flood management solutions in accordance with the Central Valley Flood Protection Plan’s (“CVFPP”) four societal goals and inform other water management forums which the current flood system may constrain (e.g. Sustainable Groundwater Management Act, Central Valley Salinity Alternatives for Long-Term Sustainability, State Board Bay-Delta Water Quality Control Plan Update, San Joaquin River Restoration, refuge management and other ecosystem restoration efforts).

WHEREAS, the Investigation should seek to identify elements of a Project that will improve various flood control measures, restore channel capacity and improve habitat and set the stage for investments by various partners in a multi-benefit, large scale effort to facilitate improved water supply and quality, support a thriving agricultural economy, assist with species recovery, and restore and protect beneficial uses;

WHEREAS, such a Project would also advance implementation of the Governor Newsom’s Water Resilience Portfolio;

WHEREAS, the California Department of Water Resources included the expansion of the Paradise Cut Bypass in the in the first Central Valley Flood Protection Plan in 2012 and again in the 2017 Central Valley Flood Protection Plan Update;

WHEREAS, the Sacramento-San Joaquin Delta Conservancy awarded the San Joaquin County Resource Conservation District two separate grants to further planning of the Paradise Cut Bypass expansion in 2016 and 2019;

WHEREAS, representatives of South Delta reclamation districts, American Rivers, the South Delta Water Agency, and SJAFCA formed a planning team in 2017 to coordinate planning associated with the Project;

WHEREAS, the South Delta Water Agency, State Water Contractors and the Central Delta Water Agency jointly funded a study in 2021 to evaluate channel restoration in the South Delta to improve water supply and quality, and restore diminished shallow water habitat and other environmental restoration;

WHEREAS, the planning team recommended the integration of significant channel restoration into the Project as necessary to both achieve desired multiple benefits and ensure support of South Delta reclamation districts;

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

- 1. Statement of Shared Goals and Principles.** The Parties each recognize the importance of Investigation to identify supportable elements of a Project which will achieve multiple objectives related to flood protection, water supply reliability, and environmental restoration in the South Delta, as well as the need for a local agency with experience successfully managing large infrastructure projects to lead implementation. This MOU is intended to facilitate implementation of the Investigation through the selection of SJAFCA as a lead and also to create a process to ensure future coordination with South Delta reclamation districts and other stakeholders regarding the supportable elements. The Parties desire to work together to address any challenges which conflict with their shared policy objectives during Investigation and planning. The Parties further recognize a successful planning process will address the specific concerns of each Party and the people each Party represents. Each Party is committed to understanding the opportunities and constraints of one another's independent authorities and regulatory responsibilities while at the same time agreeing upon certain basics of this effort.
- 2. Commitments.** In furtherance of the foregoing shared policy objectives, the Parties agree to the following commitments.
 - A. Collaborative Efforts.** The Parties agree to work together in good faith to advance an Investigation which is designed to support eventual implementation of a Project. The Parties acknowledge that at this time there are many unknowns about the viability, costs, and permitting of all potential elements of a Project. The Parties agree that unless extended by the Parties this MOU shall terminate upon the earlier of (i) the expiration of a 12-month period in which SJAFCA has no funding to continue the Investigation; and (ii) the publication of the Final Investigation as required as a deliverable under the DWR grant agreement. It is the intention of all parties to continue to work together in furtherance of all elements of the Project.
 - B. Southern Reclamation Districts' Requirements.** The Parties acknowledge and agree that local support for the Investigation is based upon channel restoration in the South Delta being a material part of the Investigation to be funded by DWR. Therefore, SJAFCA

- commits that it will not Investigate the Paradise Cut expansion unless simultaneously investigating elements of the downstream channel restoration. The Parties do not support the Paradise Cut widening without connection to the downstream channel restoration effort and will not support additional flows in Paradise Cut without completion of (i) all needed mitigation, and (ii) the downstream channel restoration elements as part of this effort; provided that nothing in this MOU shall preclude SJAFCA from participating in any independent effort to pursue any element or combination of elements identified in the Investigation as a separate project.
- C. **Lead Agency.** In recognition of the importance of moving the Project forward and SJAFCA's significant expertise with project management, the Parties agree that SJAFCA will act as the lead in pursuing the Investigation.
- D. **Advisory Committee.** In recognition of the need to maintain a high level of coordination and communication with South Delta reclamation districts during investigation and planning, the Parties agree to form an eight-member advisory committee to SJAFCA focused solely on the Project. Members will be (i) a representative from the South Delta Water Agency, (ii) four representative of reclamation districts (three from downstream districts and one from Reclamation District 2095) or up to four if there are less than four reclamation districts that are Parties, (iii) one representative from local municipality, (iv) one representative from American Rivers (or another environmental NGO designated by American Rivers), and (v) one representative from SJAFCA (either a Board member or staff). SJAFCA will bring all actions related to the Investigation to the advisory committee prior to seeking any needed approval from the SJAFCA Board of Directors. If a majority of advisory committee members vote to recommend approval of an action to the SJAFCA Board of Directors, SJAFCA staff will bring that recommendation to the SJAFCA Board of Directors for consideration. If the advisory committee does not recommend the action or if the SJAFCA Board of Directors disagrees with a recommended action, SJAFCA staff will utilize the dispute resolution process outlined in this MOU to resolve the disagreement.
- E. **Dispute Resolution.** SJAFCA staff will initially work with the Chair of the advisory committee and the Chair of the SJAFCA Board of Directors to resolve any dispute. If this effort is unsuccessful, SJAFCA staff will utilize a professional mediator to resolve the issue. If no agreement can be reached, the SJAFCA Board of Directors maintains the authority to make the final decision. Notwithstanding this process, any decision by the SJAFCA Board of Directors must be in accordance with Paragraph 2. A. above.
- F. **Funding and Availability of Funds.** The Parties will work together to identify and support state, federal, and local funding to further the Project, recognizing SJAFCA does not possess sufficient funding to plan, construct, or operate the Project without assistance.
3. **No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties and shall not be construed to create any rights for any other person or entity.
4. **Amendments.** Subsequent modifications of this Agreement, including but not limited to an extension or amendment of this Agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. Other parties may sign this MOU upon agreement by a majority of the Parties.

December 3, 2021

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates specified in the signature block below.

San Joaquin Area Flood Control Agency

By: _____
Printed name and title: _____
Date: _____

American Rivers

By: _____
Printed name and title: _____
Date: _____

San Joaquin County Resource Conservation District

By: _____
Printed name and title: _____
Date: _____

South Delta Water Agency

By: _____
Printed name and title: _____
Date: _____

Other Reclamation Districts

By: _____
Printed name and title: _____
Date: _____

Attachment A

Reclamation District 1, Reclamation District 2, Reclamation District 17, Reclamation District 404, Reclamation District 524, Reclamation District 544, Reclamation District 684, Reclamation District 773, Reclamation District 828, Reclamation District 1007, Reclamation District 2058, Reclamation District 2062, Reclamation District 2064, Reclamation District 2075, Reclamation District 2085, Reclamation District 2089, Reclamation District 2094, Reclamation District 2095, Reclamation District 2096, Reclamation District 2101, and Reclamation District 2107

DRAFT

RESOLUTION NO. SJAFCA 21-21

SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

=====

RESOLUTION TO AUTHORIZE THE CHAIRMAN OF THE BOARD TO SIGN A MEMORANDUM OF UNDERSTANDING (MOU) ONCE IT HAS BEEN EXECUTED BY THE COALITION WORKING ON THE PLANNING OF THE COMBINED PARADISE CUT EXPANSION PROJECT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

Authorize the Chairman of the Board to sign a memorandum of Understanding (MOU) affirming the San Joaquin Area Flood Control Agency (SJAFCA) as Project Lead on the combined Paradise Cut Expansion and South Delta Restoration Project (Paradise Cut), after the MOU has been executed by designated representatives of the South Delta Water Agency, American Rivers, the San Joaquin County Resource Conservation District, and at least two of the South Delta reclamation districts.

PASSED, APPROVED AND ADOPTED this 16th day of December 2021

CHUCK WINN, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

CHRIS ELIAS, EXECUTIVE DIRECTOR
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:

SCOTT L. SHAPIRO, Legal Counsel
For the San Joaquin Area
Flood Control Agency

Agenda Item 4.4

TO: Board of Directors

December 16, 2021

FROM: Chris Elias, Executive Director

SUBJECT: **FUNDING AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND SJAFCA AS PROJECT LEAD ON THE COMBINED PARADISE CUT EXPANSION AND SOUTH DELTA RESTORATION PROJECT**

RECOMMENDATIONS

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency:

1. Direct staff to negotiate and enter into a funding agreement with the California Department of Water Resources (DWR) to finance the combined Paradise Cut Expansion and South Delta Restoration Project (Paradise Cut)
2. Authorize staff to transfer seed money of up to \$100,000 from the Mossdale Tract funds to begin implementation of the funding agreement with DWR until such time as reimbursements from the state is sufficient to pay off the transfer to ensure the project moves forward with local support.

DISCUSSION

Background

On September 30, 2021 the SJAFCA Board of Directors received information and discussed progress made by the planning team in advancing the combined Paradise Cut Project. The discussion during the Board meeting of September 2021 built on the completed studies funded by planning grants from Delta Conservancy. A key deliverable from planning grants include: (1) selecting an agency to lead the next phases of the project, compiling existing technical analyses and identifying future studies needed to address local concerns, 2) developing an avoidance mitigation strategy report to address concerns of downstream stakeholders, and 3) developing a monitoring and maintenance strategy report to evaluate the monitoring and maintenance needs of the Project in the future. Following extensive discussions, SJAFCA was identified as the Project Lead on the combined Paradise Cut. A key role of the Project is to negotiate and enter into funding agreement with DWR. A draft funding agreement with DWR (including scope of work, budget and schedule) is incorporated into this staff report as Attachment I. The draft funding agreement for \$3 million is scheduled to run from June 2022 (or earlier) through June 2024.

As negotiations are still ongoing and would require direct engagement between DWR and SJAFCA staff for the next few months, it is recommended that the Board delegate the authority to the Agency Executive Director to consummate and execute the funding agreement on behalf of SJAFCA.

In support of its oversight role, staff will provide regular updates to ensure the Board is apprised about progress of the Paradise Cut Project.

FISCAL IMPACT

The seed money for the combined Paradise Cut Project will be transferred from Mossdale Tract funds up to \$100,000. The seed money will be refunded to the Mossdale Tract funds as soon as SJAFCA is reimbursed by DWR in the first and subsequent quarters for claims related to the Paradise Cut Project. Kicking off the implementation of the Funding Agreement with the seed money from Mossdale Tract fund will ensure the project moves forward with local support.

STRATEGIC PLAN CONSISTENCY ANALYSIS

Consideration of the recommendation on the combined Paradise Cut Expansion and South Delta Restoration Project is consistent with the Mission and Goals of the Board-adopted Strategic Plan. Specifically, it is consistent with the Agency mission statement of "Reduce and Manage the Region's Flood Risk", Goal #1, Plan for and Implement System Resiliency; Goal #3, Facilitate Funding Structures That Are Most Beneficial to Local Interests; and Goal #4, Support Appropriate, Mutually Beneficial Partnerships.



CHRIS ELIAS
EXECUTIVE DIRECTOR

Attachments:

1. Draft DWR Funding Agreement on Paradise Cut Expansion and South Delta Restoration Project
2. Draft Resolution to enter into funding agreement between the California Department of Water Resources and SJAFCA as project lead on the combined Paradise Cut Expansion and South Delta Restoration Project

**STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

Agreement Number: 46000XXXXX

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND
SAN JOAQUIN AREA FLOOD CONTROL AGENCY**

**FOR A MULTIBENEFIT FLOOD RISK REDUCTION, ECOSYSTEM IMPROVEMENT, AND WATER SUPPLY
IMPROVEMENT PROJECT**

FOR THE PARADISE CUT BYPASS EXPANSION PROJECT

**A PART OF THE SYSTEMWIDE FLOOD RISK REDUCTION
UNDER**

**THE CALIFORNIA DROUGHT, WATER, PARKS, CLIMATE, COASTAL PROTECTION, AND OUTDOOR
ACT OF 2018, PUBLIC RESOURCES CODE, SECTION 80000, ET SEQ.**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (DEPARTMENT OF WATER
RESOURCES) AND**

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

<SAP AGREEMENT NUMBER>

**THE CALIFORNIA DROUGHT, WATER, PARKS, CLIMATE, COASTAL PROTECTION, AND OUTDOOR
ACT OF 2018, PUBLIC RESOURCES CODE, SECTION 80000, ET SEQ. PROGRAM <PUBLIC RESOURCES
CODE SECTION 80000, ET SEQ.**

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the San Joaquin Area Flood Control Agency, a joint powers authority, in the 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:

1. **PURPOSE.** State shall provide funding from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 to Funding Recipient to assist in financing the Paradise Cut Bypass Expansion Project (Project) pursuant to Public Resources Code sections 80006 and 80145.
2. **TERM OF FUNDING AGREEMENT.** The term of this Funding Agreement begins on the date this Funding Agreement is initially executed by State, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by June 30, 2024 and no funds may be requested after September 30, 2024.
3. **PROJECT COST.** The reasonable cost of the Project is estimated to be \$3,000,000.
4. **FUNDING AMOUNT.** The maximum amount payable by the State under this Agreement shall not exceed \$3,000,000.
5. **BASIC CONDITIONS.** State shall have no obligation to disburse money for the Project under this Funding Agreement until Funding Recipient has satisfied the following conditions:
 - A. For the term of this Funding Agreement, Funding Recipient submits timely Quarterly Progress Reports as required by Paragraph 11, "Submission of Reports."
 - B. Funding Recipient submits all deliverables as specified in Paragraph 13 of this Funding Agreement and in Exhibit A.
 - C. Prior to the commencement of construction or implementation activities, Funding Recipient shall submit the following to the State:
 - i. Work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Funding Agreement until the following actions are performed:
 - a. Funding Recipient submits to the State all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - b. Documents that satisfy the CEQA process are received by the State,
 - c. State has completed its CEQA compliance review as a Responsible Agency, and
 - d. Funding Recipient receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal.

State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Funding Recipient must also demonstrate that it has complied with all applicable requirements of the

National Environmental Policy Act (NEPA) by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.

6. DISBURSEMENT OF FUNDS. State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. Any and all money disbursed to Funding Recipient under this Funding Agreement shall be deposited in a non-interest bearing account and shall be used solely to pay Eligible Project Costs.
7. ELIGIBLE PROJECT COST. Funding Recipient shall apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law and **Exhibit B**. Eligible Project Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Reimbursable administrative expenses are the necessary costs incidental but directly related to the Project included in this Agreement. Work performed on the Project after **June 30, 2022** shall be eligible for reimbursement.

Costs that are not eligible for reimbursement include, but are not limited to the following items:

- A. Costs, other than those noted above, incurred prior to the award date of this Grant.
 - B. Operation and maintenance costs, including post construction performance and monitoring costs.
 - C. Purchase of equipment not an integral part of a project.
 - D. Establishing a reserve fund.
 - E. Purchase of water supply.
 - F. Monitoring and assessment costs for efforts required after project construction is complete.
 - G. Replacement of existing funding sources for ongoing programs.
 - H. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
 - I. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to
 - J. Overhead and indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.
8. METHOD OF PAYMENT. After the disbursement requirements in **Paragraph 5 "Basic Conditions"** are met, State will disburse the whole or portions of State funding to Funding Recipient, following receipt from Funding Recipient via US mail or Express mail delivery of a "wet signature" invoice, or an electronic invoice certified and transmitted via DocuSign for costs incurred, including Cost Share, and timely Quarterly Progress Reports as required by **Paragraph 11, "Submission of Reports."** Payment will be made no more frequently than **quarterly**, in arrears, upon receipt of an invoice bearing the Funding Agreement number. State will notify Funding Recipient, in a timely manner, whenever, upon review of an Invoice, State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to State. Funding Recipient may, within thirty (30) calendar days of

the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by Funding Recipient shall include the following information:

- A. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
- B. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for the Project during the period identified in the particular invoice for the implementation of the Project.
- C. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii. Invoices must be itemized based on the categories (i.e., tasks) specified in **Exhibit B**. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - iii. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as depicted in **Paragraph 3, "Funding Amount"** and those costs that represent Funding Recipient's costs, as applicable.
 - v. Original signature and date (in ink) of Funding Recipient's Project Representative. Submit the original "wet signature" copy of the invoice form to the following address: **Colin Hanley, DWR SMI Branch 6th Floor, 715 P Street, Sacramento, CA 95814** or an electronic signature certified and transmitted via DocuSign from authorized representative to Colin Hanley, DWR SMI Branch.

All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Funding Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs/cost share). Any eligible costs for which the Funding Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to **Paragraph D.5** and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 487-489.)

9. **WITHHOLDING OF DISBURSEMENTS BY STATE.** If State determines that the Project is not being implemented in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply 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 State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to **Paragraph 11**, 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. State may consider Funding Recipient's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in **Paragraph 10, "Default Provisions."** If State notifies

Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to this paragraph, 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 and the Funding Agreement shall no longer be binding on either party.

10. DEFAULT PROVISIONS. Funding Recipient will be in default under this Funding Agreement if any of the following occur:

- A. Substantial breaches 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;
- B. Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement;
- C. Failure to operate or maintain the Project in accordance with this Funding Agreement.
- D. Failure to make any remittance required by this Funding Agreement, including any remittance recommended as the result of an audit conducted pursuant to **Paragraph D.5.**
- E. Failure to submit timely progress reports.
- F. Failure to routinely invoice State.

Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:

- A. Declare the funding 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.
- B. Terminate any obligation to make future payments to Funding Recipient.
- C. Terminate the Funding Agreement.
- D. Take any other action that it deems necessary to protect its interests.

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

11. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted via DWR's "Grant Review and Tracking System" (GRanTS). If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of **Exhibit F.** The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report is a requirement for the release of any funds retained for such project.

- A. Quarterly Progress Reports: Funding Recipient shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be shall be uploaded via GRanTS, and the State's Project Manager notified of upload. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipients activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than **October 1, 2022,** with future reports then due on successive three-month increments based on the invoicing schedule and this date.

- B. **Project Completion Reports:** Funding Recipient shall prepare and submit to State a Project Completion Report. Funding Recipient shall submit the Project Completion Report within ninety (90) calendar days of Project completion. The Project Completion Report shall include, in part, a description of actual work done, any changes or amendments to the Project, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project. The Project Completion Report shall also include, if applicable, certification of final project by a registered civil engineer, consistent with Standard Condition **D.18, "Final Inspections and Certification of Registered Civil Engineer"**. A DWR "Certification of Project Completion" form will be provided by the State.
- C. **Post-Performance Reports:** Funding Recipient shall submit Post-Performance Reports. Post-Performance Reports shall be submitted to State within ninety (90) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated annually for a total of 3 years after the completed project begins operation.

12. **OPERATION AND MAINTENANCE OF PROJECT.** For the useful life of construction and implementation projects and in consideration of the funding made by State, Funding Recipient agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. Funding Recipient or their successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Funding Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of Funding Recipient to ensure operation and maintenance of the projects in accordance with this provision may, at the option of State, be considered a breach of this Funding Agreement and may be treated as default under **Paragraph 10, "Default Provisions."**

13. **NOTIFICATION OF STATE.** Funding Recipient shall promptly notify State, in writing, of the following items:
- A. Events or proposed changes that could affect the scope, budget, or work performed under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.
 - B. Any public or media event publicizing the accomplishments and/or results of this Funding Agreement and provide the opportunity for attendance and participation by State's representatives. Funding Recipient shall make such notification at least 14 calendar days prior to the event.
 - C. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.
 - D. The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.

14. **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. Notices may be transmitted by any of the following means:

- A. By delivery in person.
- B. By certified U.S. mail, return receipt requested, postage prepaid.
- C. By “overnight” delivery service; provided that next-business-day delivery is requested by the sender.
- D. By electronic means.
- E. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar 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 electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

15. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Funding Agreement are as follows:

Direct all inquiries to the Project Manager:

Department of Water Resources

Colin Hanley, Senior Engineer, DWR SMI Branch
6th Floor, 715 P Street, Sacramento, CA 95814

Colin.hanley@water.ca.gov

Either party may change its Project Representative or Project Manager upon written notice to the other party.

Comment: Paragraph 21 – Edit this list to removal any of the optional exhibits that are not included in a program specific template. Ensure that all cross references are verified for accuracy.

16. STANDARD PROVISIONS AND INTEGRATION. This Funding Agreement is complete and is the final Agreement between the parties. The following Exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit A – Work Plan

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Funding Recipient Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – State Audit Document Requirements for Funding Recipients

Exhibit H – Project Location

Exhibit I – DWR / SJAFCA Roles and Responsibilities

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA

<Insert Funding Recipient name>

DEPARTMENT OF WATER RESOURCES

<Insert DWR Project Representative,
Title, and Division>

Date _____

<Insert Funding Recipient Project Representative
Name and title>

Date _____

Approved as to Legal Form and Sufficiency

<Insert name and title>

Office of General Counsel

Date _____

DRAFT

Exhibit A
WORK PLAN

DRAFT

EXHIBIT A: Work Plan**San Joaquin Area Flood Control Agency
Paradise Cut Expansion and South Delta Restoration Project****Department of Water Resources (DWR)
Prop 68 Systemwide Flood Risk Reduction Program****Timeline**

Project will start upon execution of contract, approximately April-June 2022, and money should be spent by June 30, 2024.

Purpose and Need

The purpose of this scope of work is to establish a project leadership structure capable of leading the Project partnership to implement the Paradise Cut Expansion and South Delta Restoration Project (Project) over the long-term, and build on past planning work to address remaining information gaps, and develop, rigorously evaluate and select a preferred project alternative that encompasses both an expanded bypass and restoration of downstream channel capacity. This scope will be executed with the support of a comprehensive, and inclusive strategic outreach process that meaningfully engages interested parties to prepare the Project for subsequent environmental compliance and design phases.

Project Description

Funding from the California Department of Water Resources (DWR) Systemwide Flood Risk Reduction Program will advance Phase 3 of the Project. The proposed Project incorporates an expanded flood bypass, channel dredging to increase water supply reliability for in-Delta users, and floodplain, wetland, and riparian habitat enhancements to help restore the landscape-scale ecosystem functions necessary for climate change resilience. The expanded flood bypass is estimated to reduce river flood stage by 0.7 – 3.0 feet along a 28-mile corridor of the San Joaquin River adjacent to Manteca, Lathrop, and Stockton. Communities in this reach of the San Joaquin River simultaneously suffer from some of the highest levels of social vulnerability and flood risk in California and the Delta and are past overdue for an equitable investment in flood infrastructure improvements. The restoration of channel depth in Old River, Middle River, and Grant Line Canal, currently the focus of a detailed study to identify the scope of needed improvements and costs, will remedy unaddressed historical and ongoing siltation in the southern Delta affecting net flow in channels, irrigation intake pump reliability, waterway navigation, water quality, exports from the Delta, and prevalence of nonnative species. Habitat enhancements will restore ecosystem functions vital to climate change resilience, such as refuge, foraging and migratory connectivity habitat that will benefit Swainson's hawk, riparian brush rabbit, and riparian songbirds. The project also provides additional floodplain adjacent to the San Joaquin River upstream and downstream of Paradise Cut to enable juvenile salmon rearing habitat restoration that may otherwise be prohibited due to perceived encroachment on flood conveyance capacity.

The Project is consistent with the following multiple benefit objectives for southern Delta communities and ecosystems:

- Reduce catastrophic flood risk for communities including Lathrop, Manteca, and Stockton
- Protect farms from uncontrolled flooding
- Restore riverine, floodplain, riparian, and wetland habitat for native fish and wildlife
- Improve irrigation intake reliability and waterway navigability
- Improve water supply reliability and resilience to climate change by supporting more flexible water supply management

Task 1 – Project Management and Administration

The San Joaquin Area Flood Control Agency (SJAFCA) will serve as the project and grant manager and will be responsible for consultant procurement, contract management, project schedule development and maintenance, project-level finance planning, cash flow analysis, and creation and facilitation of the Steering Committee, whose members will include current Phase 2 Planning Team members. All reports shall be submitted to the State’s Project Manager and shall be submitted via DWR’s “Grant Review and Tracking System” (GRanTS).

Deliverables:

- Development, implementation and funding of the Steering Committee (SC) according to a Steering Committee and Governance Structure Charter, to be developed under this task
- Administration of the SJAFCA Paradise Cut Advisory Committee
- Quarterly invoices and Progress Reports
- Contractor procurement
- Project Completion Report
- Post-Performance Report
- Identify funding opportunities, to include:
 - scope of work for next phase, and schedule and range of cost estimates for implementing phased restoration

Task 2 – Technical Review Panel

The goal of this task is to have an independent panel of experts evaluate technical analyses performed to date, identify any pertinent technical shortcomings of this work, make recommendations on additional technical analyses or model updates required to advance the project, and review technical products produced under this scope of work. SJAFCA, working within a collaborative selection process administered by the Steering Committee (see Task 1), will select and retain a three-member (final number tbd) Technical Review Panel (TRP)

comprised of independent technical experts to meet this objective as well as to comply with anticipated USACE Safety Assurance Reviews and Urban Levee Design Criteria guidelines in future phases of work. In addition to these responsibilities, the TRP will specifically review the base data and hydraulic model used in American Rivers' Phase I Planning Project to evaluate performance of conceptual alternatives, stage reduction benefits and potential downstream impacts, and provide recommendations on additional data collection, or model modifications needed. This task will be coordinated with a nascent effort by South Delta Water Agency and DWR to conduct annual southern Delta channel surveys for the purposes of hydraulic model validation for the southern Delta.

Deliverables:

- Select and retain Technical Review Panel
- Technical Memo: Base Data and Hydraulic Model Evaluation and Recommendations
- Technical Review Panel meetings
- Summary Reports on technical analyses completed to date

Task 3 – Strategic Outreach and Local Engagement

The input and support of interested parties, and the engagement of community members, non-governmental organizations, and state and federal agencies is critical to the expeditious and successful implementation of the Project. The goal of this task is to continue to engage historically interested parties, expand the number and diversity of interested parties, and to solicit input on project alternative formulation and Project planning. This task will include selecting and retaining an independent facilitator through a collaborative process to weigh the desires of interested parties and communicate information to the public. Outreach and engagement will integrate and support the Steering Committee and Governance Charter (see Task 1).

Deliverables:

- Engagement Strategy
- Facilitate monthly Steering Committee meetings with associated notes, and summaries
- Facilitate SJAFCAs Advisory Committee meetings as necessary with associated notes, and summaries
- Annual (2/yr) public outreach and informational workshops
- General outreach to interested parties

Task 4 – Feasibility Study

The goal of this task is to complete a Feasibility Study, whose structure will be adapted from the DWR Feasibility Study Framework where appropriate, to create a foundational compilation of analyses, knowledge, and design alternatives evaluation used to advance subsequent phases of the Project. This task will also include translating the technical elements of the project and feasibility study to the Steering Committee, Advisory Committee, and public. Elements of the

Feasibility Study Framework have already been completed, in part or in full, during multiple phases of grant-funded Paradise Cut planning efforts. This task will complete remaining elements of the Feasibility Study Framework, including development, evaluation, and selection of preliminary project alternatives to prepare the Project for environmental compliance and advanced design stages in a subsequent project phase.

The Feasibility Study may include, but will not necessarily be limited to, the sections included in the DWR Feasibility Study Framework. Document sections listed below under **Task 4 – Feasibility Study** are structured to align with sections of the DWR Feasibility Study Framework below:

- (1) Introduction
 - a. Project Setting
 - b. Project Background/History
 - c. Project Description
 - d. Other Related Studies and Reports
 - e. Interested Parties Engagement
 - f. Report Organization
- (2) Inventory and Forecast
 - a. Present Conditions
 - b. Forecast – Future Without-Project Conditions
- (3) Problems and Opportunities
 - a. Opportunities
- (4) Goals & Objectives
 - a. Other Considerations
 - b. Constraints
- (5) Formulation of Preliminary Alternatives
- (6) Evaluation and Comparison of Final Array of Alternatives
- (7) Recommendation and Implementation
- (8) Project Financial Plan
- (9) Recommended Next Steps

Introduction

This introduction will include Feasibility Study sections covering project setting, background, description, related studies and reports, and outline a strategy for engagement of interested parties (see Task 3 for development of this strategy). These document sections will be developed using Project planning documents completed to date, which include:

- Local Engagement Summaries
- Existing Conditions Technical Memo
- Technical Memo: Development and Calibration of CVFED September 28, 2018 Based Lower San Joaquin River HEC-RAS model
- Restoration Opportunities Tech Memo
- Paradise Cut Conceptual Model Tech Memo

- Permitting Strategy Tech Memo
- Preliminary Cost Estimate
- Local Engagement Strategy
- Existing and Needed Technical Analyses Tech Memo
- Avoidance and Mitigation Strategy
- Long-term Monitoring and Maintenance Strategy

Inventory and Forecast

The goals of the inventory and forecast section are to: (1) summarize present conditions and future without-project conditions, and (2) advance technical studies determined to be necessary by Phase 2 analyses (as funding allows), strategic outreach and local engagement and recommendations of the TRP (see Task 2). It is anticipated that the TRP will support the SC in reviewing studies completed to-date and determining if additional studies are needed to advance the project. In spring 2022, the Phase 2 Planning Team will identify additional needed technical studies which may include, but are not limited to:

- Baseline Surveys, including:
 - Wetland delineation, biological, cultural resources, conceptual geotechnical evaluation
- Sediment Transport Model supporting evaluation of project alternatives
- Water Quality Problems and Opportunities Analysis, including:
 - Summary of existing water quality problems and the causal factors and uncertainties; evaluation of how dredging could reduce or exacerbate these problems
- Incorporation of results and recommendations from an ongoing South Delta Dredging Feasibility Study

Problems and Opportunities

The purpose of the problems and opportunities section is to inform the identification and clear presentation of problems and opportunities given the existing conditions in the vicinity of the Project planning footprint. The problems and opportunities can then be used to guide development of the conceptual design as well as later design stages and environmental planning. At this time, the Phase 2 Planning Team has identified the following necessary topic areas to be covered in this section which include, but are not limited to:

- Avoidance and Mitigation Strategy, to include:
 - Building on work completed during Phase 2 to complete analyses to avoid or mitigate negative hydraulic or sediment impacts from the Project to downstream interests, including planning for dredging, and: 1) choose a method to increase channel capacity, 2) identify and prioritize anticipated mitigation requirements for dredging, 3) identify and prioritize anticipated mitigation requirements for water quality impacts, and 4) identify a method to reduce or maintain flood risk

(if necessary, based on results from Task 4). This strategy will also identify mitigation opportunities in the *South Delta Master Plan*, currently being developed by the South Delta Water Agency during Phase 2.

- Land and Conservation Easement Acquisition Strategy:
 - Build on work completed during Phase 1 to complete a strategy to acquire flood and conservation easements for all affected land within the Project footprint, and: 1) Identify challenges and opportunities for acquisition (i.e., fee titles, easements, endowments), and 2) assess needs for eminent domain action, authority, and commitments
 - Build on Phase 2 to complete a Long-term Land Management Strategy.
- Lower San Joaquin Regional Mitigation Needs and Restoration Assessment:
 - Building on existing work completed by SJAFCA and River Partners, develop a proactive strategy to estimate necessary Project mitigation and comprehensively integrate the Project with regional mitigation needs, and projects

The Problems and Opportunities section of the Feasibility Study should evaluate constraints and opportunities previously identified by the Phase 2 Planning Team, which may include but are not limited to:

- Reinforcement or hardening of the Duel levee
- Confirm that a levee is not needed south of the Duel levee (some homes may need to be elevated)
- Rail trestle design
- Revisit the conclusion that existing bridge openings do not need to be expanded or reinforced
- Design the weir
- Design retrofit of pumps that currently drain the expansion area that are also critical for draining Duel
- Potential repurposing of the RD 2095 levee on the San Joaquin and associate opportunities and constraints
- Hydraulics of overflow weir dynamics

Goals and Objectives

The purpose of this section is to formulate planning goals and objectives that will allow the SC to address problems identified in Subtask 4.3, while capitalizing on opportunities to maximize multiple benefits and investment efficiency. Planning goals and objectives must be directly related to the problems and opportunities identified and must be clearly defined and provide information on the effect desired.

The objectives for the Feasibility Study must be specific and measurable and should reflect the desired outcome of the project, including alignment with commitments to Integrated Watershed Management, State interest, DWR policy directions, and any specific goals and objectives established by authorizing or appropriations language for the study.

Formulation of Preliminary Alternatives

The purpose of this section is to formulate various ways to achieve the goals and objectives developed in the Goals and Objectives section, so as to solve the problems and realize the opportunities identified in the Problems and Opportunities section. An alternative plan consists of a system of structural and/or nonstructural measures, strategies, or programs formulated to meet, fully or partially, the identified study planning objectives subject to the planning constraints. The SC will formulate a range of alternative plans that can then be screened and refined in subsequent iterations throughout the planning process.

Alternatives Evaluation

The purpose of this section is to complete a comparison of the with-project and without-project conditions for each alternative. A wide range of measures will be selected to complete this comparison and will reflect DWR's commitment to integrated watershed management. Analyses may suggest opportunities for further refinement of alternative plans or changes in configurations to improve the tradeoff between multiple benefits, leading to selection of a preferred alternative.

Deliverables

- Baseline Surveys
- Sediment Transport Model
- Water Quality Problems and Opportunities Analysis
- Avoidance and Mitigation Strategy
- Land and Conservation Easement Acquisition Strategy
- Lower San Joaquin Regional Mitigation Needs and Restoration Assessment
- Project Financing Strategy

Task 5 – Preliminary Engineering and Landscape Designs

The goal of this task is to finalize preliminary designs (10%) for the preferred alternative including landscape-scale plans for multiple-benefit ecosystem restoration in the Project footprint. Preliminary Design for the Preferred Alternative will be used to support initial review by the SC and interested parties, and to support environmental compliance (i.e., CEQA review).

The Preliminary Design will be based on Feasibility Study and interim products (Task 4), and any further early feedback communicated by SC. The Preliminary Design will articulate the scope and scale of the Project, identify site extents, restoration layout and elements, project constraints and limits. The Preliminary Design will show the general dimensions and design elevations of enhanced weir connection(s), and proposed channel restoration areas.

Deliverables:

- Preliminary designs

Exhibit B
BUDGET

Exhibit B: Budget
San Joaquin Area Flood Control Agency
Paradise Cut Expansion and South Delta Restoration Project

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Plan Elements	Estimated Costs
Task 1 - Project Management and Administration	\$425,000.00
Task 2 - Technical Review Panel	\$175,000.00
Task 3 - Strategic Outreach and Local Engagement	\$350,000.00
Task 4 - Feasibility Study	\$1,750,000.00
Task 5 - Preliminary Engineering and Landscape Designs	\$300,000.00
TOTAL	\$3,000,000.00

Exhibit C
SCHEDULE

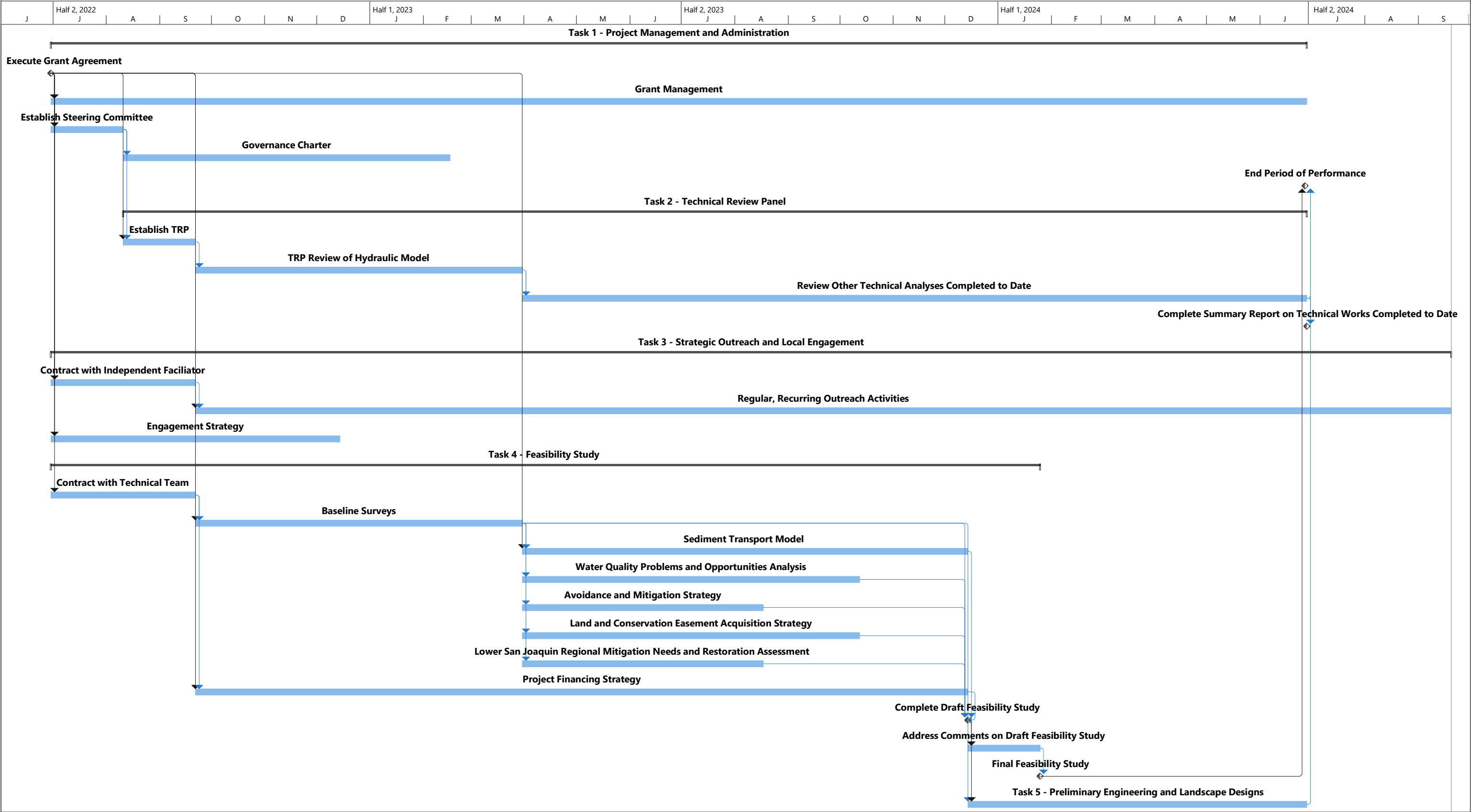


Exhibit D**STANDARD CONDITIONS****D.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**

- A. **Separate Accounting of Funding Disbursements:** 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 and disbursements 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 in a non-interest bearing account, 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) calendar days of the expiration of the Funding Agreement, whichever comes first.

D.2. ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE: Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 and through an agreement with the State Department of Water Resources." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

D.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. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.

D.4. 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.

D.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 11** or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) 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 its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Funding Recipient's activities. (Pub. Resources Code, § 80012, subd. (b).)

- D.6. BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, 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, by Executive Order, or by order of the Department of Finance, the 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.
- D.7. CALIFORNIA CONSERVATION CORPS: Funding Recipient may use the services of the California Conservation Corps or other community conservation corps as defined in Public Resources Code section 14507.5.
- D.8. CEQA: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with **Paragraph 11**.
- D.9. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 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 Family Code section 5200 et seq.; 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.
- D.10. CLAIMS DISPUTE: Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the 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 this Agreement to implement the terms of any such resolution.

- D.11. COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- D.12. 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.
- D.13. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- 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. (Gov. 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.
- D.14. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.15. DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than 30 calendar 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 \$5,000.00 per item. Within 60 calendar 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.

- D.16. 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 (Gov. 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.
 - B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. Funding Recipient's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
 - C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 - i. Will receive a copy of Funding Recipient's drug-free policy statement, and
 - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.
- D.17. FUNDING RECIPIENT'S RESPONSIBILITIES: Funding Recipient and its representatives shall:
- A. Faithfully and expeditiously perform or cause to be performed all project work as described in **Exhibit A (Work Plan)** and in accordance with **Project Exhibit B (Budget)** and **Exhibit C (Schedule)**.
 - B. Accept and agree to comply with all terms, provisions, conditions, and written 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 funding.
 - C. Comply with all applicable California, federal, and local laws and regulations.
 - D. Implement the Project in accordance with applicable provisions of the law.
 - E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
 - F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
 - G. Be solely responsible for design, construction, and operation and maintenance of projects within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
 - H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The 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 payment disputes with contractors and

subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.

- D.18. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.19. INCOME RESTRICTIONS: The Funding Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Funding Recipient under this Agreement shall be paid by the Funding Recipient to the State, to the extent that they are properly allocable to costs for which the Funding Recipient has been reimbursed by the State under this Agreement. The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

Comment: Clause D.22 – Please work with OCC to ensure that the indemnification clause addresses program-specific issues and concerns. For flood-related financial assistance program, the highlighted text must be included.

- D.20. INDEMNIFICATION: Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
- D.21. 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.
- D.22. 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.
- D.23. 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.
- D.24. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- D.25. MODIFICATION OF OVERALL WORK PLAN: At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of **Exhibits A, B, and C** which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes

with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.

- D.26. **NONDISCRIMINATION:** During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or 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.

- D.27. **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.
- D.28. **PERFORMANCE BOND:** Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D.29. **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 Public Contract Code section 10353.
- D.30. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The 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.
- D.31. **PROJECT ACCESS:** The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D.32. **REMAINING BALANCE:** In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify

the Grantee stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Grant Agreement.

- D.33. 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.
- D.34. RETENTION: The State shall withhold ten percent (10%) of the funds requested by the Funding Recipient for reimbursement of Eligible Project Costs until the Project is completed and Final Report is approved. Any retained amounts due to the Funding Recipient will be promptly disbursed to the Funding Recipient, without interest, upon completion of the Project.
- D.35. 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. (Gov. 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.
- D.36. 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.
- D.37. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both 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 in this Funding Agreement.
- D.38. 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.
- D.39. TERMINATION BY FUNDING RECIPIENT: Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.
- D.40. TERMINATION FOR CAUSE: Subject to the right to cure under **Paragraph 11**, 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 including but not limited to reasons of default under **Paragraph 11**.
- D.41. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 days' advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.42. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.43. TIMELINESS: Time is of the essence in this Funding Agreement.

- D.44. 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. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at: <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- D.45. UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 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.
- D.46. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D.47. 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.

Exhibit E

AUTHORIZING RESOLUTION ACCEPTING FUNDS TEMPLATE

Exhibit F**REPORT FORMATS AND REQUIREMENTS**

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

1. PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information.

PROJECT STATUS

For each project, describe the work performed during the time period covered by the report including but not limited to:

PROJECT INFORMATION

- Legal matters
- Engineering Evaluations
- Environmental matters
- Status of permits, easements, rights-of-way, rights of entry 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
- Estimate the percentage completion of the overall project
- Identify key issues that need to be resolved
- Photos documenting progress

COST INFORMATION

- Provide a list showing all project 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
- 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

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
- 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

2. PROJECT COMPLETION REPORT

Project Completion Reports shall generally use the following format.

EXECUTIVE SUMMARY – Should include a brief summary of project information and include the following items:

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

REPORTS AND/OR PRODUCTS – The following items should be provided

- Electronic copies of any data collected, not previously submitted
- Self-Certification that the Project meets the stated goal of the funding agreement (e.g. 100-year level of flood protection, HMP standard, PI-84-99, etc.)
- Project photos
- Discussion of problems that occurred during the work and how those problems were resolved
- A final project schedule showing actual progress versus planned progress
- All deliverables listed in the Scope of Work

COSTS AND DISPOSITION OF FUNDS – A list of showing:

- The date each invoice was submitted to State
- The amount of the invoice
- The date the check was received
- 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 meeting 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.
 - Evaluation cost information, shown by material, equipment, labor costs, and any change orders
 - Any other incurred cost detail
 - A statement verifying separate accounting of funding disbursements
- Summary of project cost including the following items:
 - Accounting of the cost of project expenditure;
 - Include all internal and external costs not previously disclosed; and
 - A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION – Any relevant additional Information should be included.

Exhibit G**STATE AUDIT DOCUMENT REQUIREMENTS FUNDING RECIPIENTS**

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. List of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event of this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each funded project.

State Audit Document RequirementsInternal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
 - a) Receipts and deposits
 - b) Disbursements
 - c) State reimbursement requests
 - d) Expenditure tracking of State funds
 - e) Guidelines, policy, and procedures on State funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans, or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners' documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

Project Files:

1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.

Exhibit H

Project Location

Project Location/Site/Vicinity Map – Provide a map and/or diagrams depicting the project location and site characteristics including the area and watershed encompassed by the project and disadvantaged communities within the project area (if applicable).

Project Drawings and Sketches – Provide drawings or sketches of project features in adequate detail to describe them.

If needed, provide a description of the project location including overlying jurisdiction (City, County, State, or Federal land), Assessor Parcel Numbers, property addresses, legal descriptions, and Latitude/Longitude of project site.

The map displays the Sacramento-San Joaquin River Delta region. A red line outlines the proposed bypass expansion area, which follows the river's course from the north towards the south. A blue shaded area indicates the existing bypass area, located further south. A green shaded area represents the proposed dredging study area, situated near the city of Lathrop. The map includes a legend in the bottom left corner with three categories: PROPOSED BYPASS EXPANSION AREA (red line), EXISTING BYPASS AREA (blue shaded area), and PROPOSED DREDGING STUDY AREA (green shaded area). A scale bar at the bottom left shows distances from 0 to 3 miles. A north arrow is located at the bottom center. An inset map in the top right corner shows the broader regional context, including the Sacramento-San Joaquin River Delta, the Central Valley, and the surrounding states of California and Oregon. Labels on the map include 'Vidori Islan', 'Coney Island', 'Grant Lin', 'SAN JOAQUIN', 'West Valley Mall', 'Tracy', 'Lathrop', and '205'.

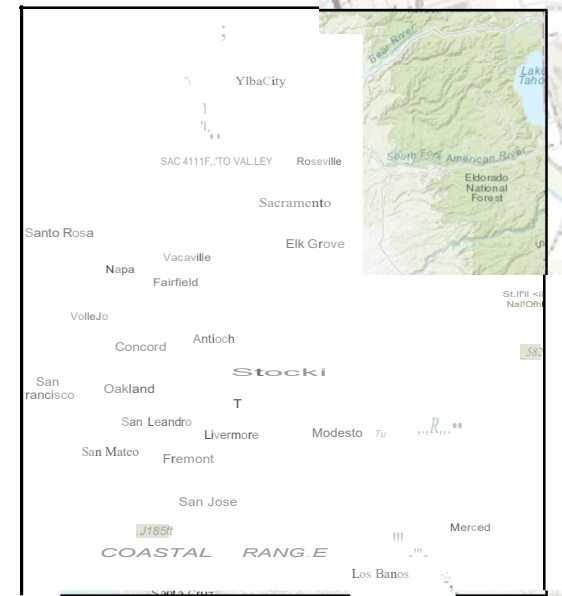


Exhibit I**DWR / San Joaquin Area Flood Control Agency Roles and Responsibilities (12/6/2021 Working Draft)**

DWR views the relationship between the Department and the San Joaquin Area Flood Control Agency (SJAFA) as a partnership. This working draft Roles and Responsibilities Exhibit will be revised in partnership with project partners during the contracting period, and finalized with the executed Funding Agreement.

The following describes DWR's broad level of engagement and participation in the development of the Project Feasibility Study:

- Assisting with establishing the governance structure of the Project
- Participating in establishing Project goals, constraints, and opportunities
- Participating in the development of the outreach and engagement strategy
- Participating in regular meetings
- Engaging in key Project decisions
- Voicing input from a systemwide multibenefit program perspective
- Reviewing draft deliverables and providing comments
- Approving final deliverables for consistency with the Project goals, constraints, and opportunities

DWR expects project partners to follow through on the scope and schedule of work, honor the commitments in this Funding Agreement, and include DWR in key decisions and updates throughout the term of the Project.

RESOLUTION NO. SJAFCA 21-22

**SAN JOAQUIN AREA
FLOOD CONTROL AGENCY**

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**AUTHORIZATION TO ENTER INTO FUNDING AGREEMENT BETWEEN THE CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND SJAFCA AS PROJECT LEAD ON THE
COMBINED PARADISE CUT EXPANSION AND SOUTH DELTA RESTORATION PROJECT**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD
CONTROL AGENCY, AS FOLLOWS:

1. Direct staff to negotiate and enter into a funding agreement with the California Department of Water Resources (DWR) to finance the combined Paradise Cut Expansion and South Delta Restoration Project.
2. Authorize staff to transfer seed money of up to \$100,000 from the Mossdale Tract funds to begin implementation of the funding agreement with DWR until such time as reimbursements from the state is sufficient to pay off the transfer to ensure the project moves forward with local support.

PASSED, APPROVED AND ADOPTED this 16th day of December 2021

CHUCK WINN, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

CHRIS ELIAS, EXECUTIVE DIRECTOR
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:

SCOTT L. SHAPIRO, Legal Counsel
For the San Joaquin Area
Flood Control Agency

**End of
Agenda Packet**