



MONTEREY COUNTY WATER RESOURCES AGENCY

893 BLANCO CIRCLE
SALINAS, CA 93901
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BOARD OF DIRECTORS

BOARD OF DIRECTORS:

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Jesse Avila, Deputy County Counsel

Tuesday, March 24, 2015

SPECIAL JOINT MEETING OF THE MONTEREY COUNTY WATER RESOURCES AGENCY BOARD OF DIRECTORS, MONTEREY COUNTY WATER RESOURCES AGENCY BOARD OF SUPERVISORS AND MONTEREY COUNTY BOARD OF SUPERVISORS

A G E N D A

Staff reports relative to the agenda items listed below will be available for public review on the Agency's website by 7:00 PM on Friday, March 20, 2015 and at the Monterey County Water Resources Agency (Agency), 893 Blanco Circle, Salinas. If additional documents are produced by the Agency and provided to a majority of the Board regarding any item on the agenda after staff reports have been distributed, they will be available at the Agency during normal business hours and posted on the Agency website at http://www.mcwra.co.monterey.ca.us/BOD/BOD/AgendaCurrent_n.htm. For additional information, please contact Wini Chambliss, Clerk to the Board, at (831) 755-4896.

- 1. CALL TO ORDER/ESTABLISH QUORUM – 2:30 P.M.**
- 2. ROLL CALL**

3. PUBLIC COMMENTS

*(Limited to three minutes per speaker on matters within Monterey County Water Resources Agency jurisdiction and **not listed** on the agenda. Members of the Public will have the opportunity to ask questions or make statements on agenda items as they are considered by the Board.)*

4. CONSENT CALENDAR

- A. Approve an extension to the term of the Memorandum of Understanding Regarding Source Waters and Water Recycling, dated 8 October 2014, and/or the term of the Produce Wash Water Utilization Agreement, dated 1 July 2014; and, authorize the General Manager to execute extension(s) provided, however, there are no material changes to the Agreements other than the Agreements' term.
- B. Rescind Resolution Number 14-281; and, approve and authorize the Chair to sign a Memorandum of Agreement between the Monterey County Water Resources Agency and the National Steinbeck Center.

5. ACTION ITEMS

- A. Consider receiving a report on potential funding opportunities for the Interlake Tunnel Project, and provide direction to Staff.
- B. Consider:
 - i. Approving a Feasibility Cost Sharing Agreement (FCSA) between the U.S. Army Corps of Engineers, Monterey County Water Resources Agency and Santa Cruz County Flood Control and Water Conservation District for the Pajaro River Levee Project;
 - ii. Certifying the Authority to enter into said agreement;
 - iii. Certifying against Lobbying in regards to Federal funding, satisfying the Non Federal Sponsor's obligation under the Agreement; and,
 - iv. Authorizing the General Manager of Monterey County Water Resources Agency to execute said Agreement once the full Federal funding amount is identified.
- C. Consider receiving a report on a comprehensive approach to Salinas Valley Groundwater Basin sustainability.

6. ADJOURNMENT

CONSENT CALENDAR



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: WRAA 15-005

March 24, 2015

Introduced: 3/18/2015

Current Status: Agenda Ready

Version: 1

Matter Type: WR Agreement

Approve an extension to the term of the Memorandum of Understanding Regarding Source Waters and Water Recycling, dated 8 October 2014, and/or the term of the Produce Wash Water Utilization Agreement, dated 1 July 2014; and, authorize the General Manager to execute extension(s) provided, however, there are no material changes to the Agreements other than the Agreements' term.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Supervisors:

Approve an extension to the term of the Memorandum of Understanding Regarding Source Waters and Water Recycling, dated 8 October 2014, and/or the term of the Produce Wash Water Utilization Agreement, dated 1 July 2014; and, authorize the General Manager to execute extension(s) provided, however, there are no material changes to the Agreements other than the Agreements' term.

SUMMARY:

With the current drought entering its fourth year, the Agency continues to need treated produce wash water for irrigation purposes. Existing agreements allowing utilization of produce wash water by the Agency have either expired or are expiring.

DISCUSSION:

The Produce Wash Water Agreement ("Agreement") between the Water Resources Agency, the City of Salinas and the Monterey Regional Water Pollution Control Agency provided, in 2014, approximately 2,150 acre-feet of produce wash water for ultimate utilization in the Castroville Seawater Intrusion Project ("CSIP"). The Agreement expired on October 31, 2014.

The Memorandum of Understanding Regarding Source Waters and Water Recycling ("MOU") at Paragraph 3.j. states the following: "WRA to receive the agricultural wash water on terms similar to the Produce Wash Water Agreement, dated 1 July 2014, in 2015, 2016, 2017, and until the GWR project becomes operational."

However, Paragraph 7 of the MOU states the following: "This Memorandum of Understanding will expire the earlier of (i) execution of a Definitive Agreement, or (ii) March 31, 2015."

The intent of the MOU was to establish a protocol for the Agency to receive treated produce wash water until specific negotiated terms for produce wash water utilization were triggered by the operation of the Groundwater Replenishment Project.

A proposed Amendment No. 1 to the MOU is attached, extending its term to not later than June 30, 2015. This allows receipt of produce wash water until that date. However, the City of Salinas has indicated it may want to resurrect the Agreement also.

OTHER AGENCY INVOLVEMENT:

Monterey Regional Water Pollution Control Agency
Monterey Peninsula Water Management District
Monterey County Water Resources Agency
City of Salinas
Marina Coast Water District

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

FINANCING:

The cost of primary and secondary treatment of produce wash water is paid by the City of Salinas. The cost of tertiary treatment of the produce wash water to meet irrigation standards is paid by the Water Resources Agency as part of its cost of running CSIP.

Prepared &
Approved by:


David E. Chardavoyne, General Manager, (831) 755-4860

Attachments:

Amendment No. 1 to the Memorandum of Understanding Regarding Source Waters and Water Recycling
Memorandum of Understanding Regarding Source Waters and Water Recycling dated 8 October 2014
Produce Wash Water Utilization Agreement dated 1 July 2014

**AMENDMENT 1
TO
MEMORANDUM OF UNDERSTANDING REGARDING
SOURCE WATERS AND WATER RECYCLING**

THIS AMENDMENT 1 TO THE MEMORANDUM OF UNDERSTANDING (“Amendment”) is made this _____ day of _____ 2015, by and between Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, the Marina Coast Water District, and Monterey Peninsula Water Management District, collectively the “Parties.”

Sections 4 and “MISCELLANEOUS” Item 7 are amended to read as follows:

4. Accounting Protocols

PCA to enter into agreement with WRA by June 30, 2015 to achieve the following:

- a. PCA’s adoption of activity-based costing for all its CSIP, SRDF and SVRP activities.
- b. Revision of the various financial protocols currently utilized to achieve one standard protocol for each of CSIP, SRDF and SVRP.
- c. Allocation methodologies for costs associated with CSIP, SRDF, and SVRP.
- d. An annual audit of PCA’s financial transactions related to CSIP, SRDF and SVRP at WRA expense.
- e. PCA to credit to the CSIP and SVRP accounts any pro rata revenues it receives from byproducts of tertiary treated wastewater.
- f. A third-party agreed upon by both PCA and WRA to be hired to design and implement these Accounting Protocols.

MISCELLANEOUS

7. This Memorandum of Understanding will expire the earlier of (i) execution of a Definitive Agreement, or (ii) June 30, 2015.

#####

WITNESS, the Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, Marina Coast Water District, and the Monterey Peninsula Water Management District entered into this Memorandum of Understanding as of the date first written above.

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

By: _____

Its: _____

MONTEREY COUNTY WATER RESOURCES AGENCY

By: _____

Its: Chair of the Monterey County Water Resources Agency Board of Supervisors

CITY OF SALINAS

By: _____

Its: _____

MARINA COAST WATER DISTRICT

By: _____

Its: _____

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

By: _____

Its: _____

**MEMORANDUM OF UNDERSTANDING REGARDING
SOURCE WATERS AND WATER RECYCLING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 8th day of October 2014, by and between Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, the Marina Coast Water District, and Monterey Peninsula Water Management District, collectively the “Parties.”

The Monterey Regional Water Pollution Control Agency (“PCA”) was formed as a California Joint Powers Agency by a Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, effective June 29, 1979. The Monterey County Water Resources Agency (“WRA”) was established in 1995 pursuant to the Monterey County Water Resources Agency Act. The City of Salinas (“Salinas”) is a California charter city and municipal corporation. The Marina Coast Water District (“MCWD”) is a county water district established in 1960 pursuant to Water Code §§30000, *et seq.* The Monterey Peninsula Water Management District (“MPWMD”) was established in 1977 as a California special district pursuant to the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, as amended, found at Water Code Appendix (Water C. App.) §§118-1, *et seq.*)

WITNESSETH:

WHEREAS, PCA entered into an Annexation Agreement, dated April 25, 1989, with MCWD providing, among other things, annexation of MCWD and for it to become a member entity of MRWPCA; and,

WHEREAS, the Annexation Agreement between PCA and MCWD provides MCWD a water right entitlement equal, as a minimum, to the “volume of MCWD wastewater treated by PCA”; and,

WHEREAS, PCA entered into an agreement with WRA, dated June 16, 1992, for construction and operation of a tertiary treatment system (the “1992 Agreement”), with subsequent amendments thereto, as follows: Amendment No. 1 on May 30, 1994; Amendment No. 2 on February 16, 1998; and, Amendment No. 3 on May 28, 2002; and,

WHEREAS, the 1992 Agreement, as amended, caused WRA to finance \$29,763,849.56 in tertiary treatment and related facilities; and,

WHEREAS, PCA and Monterey Peninsula Water Management District on May 20, 2013 entered into a Cost Sharing Agreement for the planning and development of the Pure Water Monterey Groundwater Replenishment (“GWR”) Project for the advanced treatment and recycling of a variety of source waters for indirect potable reuse;

NOW, THEREFORE, for and in reliance on the foregoing, the Parties hereby agree to negotiate a Definitive Agreement to establish contractual rights and obligations of all Parties, containing, as a minimum, the following provisions:

1. Protection of MCWD’s Recycled Water Right Entitlement

- a. Reaffirmation by PCA of MCWD’s recycled water right entitlement granted to MCWD pursuant to Paragraph 12 of the April 25, 1989 Annexation Agreement between PCA and MCWD.
- b. Reaffirmation that MCWD’s recycled water right is the senior right.
- c. MCWD, in use of its recycled water entitlement, will comply with all applicable requirements set forth in Contract No. 5-07-20-W1284, between the Bureau of Reclamation and WRA including, but not limited to, those contained in Paragraphs 10b and 10c, all at MCWD’s sole cost and expense.
- d. MCWD’s recycled water right entitlement may be made contractually available by MCWD to another Party and may be made available to WRA for CSIP if not utilized by MCWD, or its assignee, in any given year.

2. Provision of Recycled Water to WRA

- a. WRA to be supplied recycled water during the agricultural growing season in a minimum volume equal to the wastewater flows to the Regional Treatment Plant from all existing PCA members, plus treated waters originating from a variety of newly identified additional “incremental” and interruptible sources described in Section 3.a. hereof, subject to the provisions of Section 3.a.iii.
- b. The cost of primary and secondary treatment of Salinas agricultural wash water, estimated at \$179/acre-foot in 2014, to be paid to PCA by Salinas, the future rates for which to be established pursuant to Section 3(o) hereof.
- c. The cost of tertiary treatment of agricultural wash water to be paid to PCA by WRA, the future rates for which will be established by a protocol to be set forth in the Definitive Agreement.

3. Phase I – GWR Project Water and CSIP Area Additional Water

- a. Phase I to provide water from newly identified sources that are “incremental” additions over and above the incoming wastewater flows as identified in the 1992 Agreement, which consists of Salinas agricultural wash water, Salinas stormwater, all recoverable Reclamation Ditch water diverted at Davis Road, a portion of Tembladero Slough water diverted at Castroville, all recoverable Blanco Drain water, Lake El Estero stormwater, and reoperation of the Salinas ponds to store winter flows for summer use. Such waters may also include additional stormwater from other locations on the Monterey Peninsula. Phase I includes both (a) improvements to the SVRP in order to provide winter water to offset pumping at CSIP (contingent upon WRA completing hydraulic modifications to the existing CSIP system), and (b) treatment of wastewater from the Regional Treatment Plant that has been determined to be excess and not processed by the SVRP, provided, however, that PCA not curtail SVRP operations to produce said excess water, but in both cases such sources are not considered “incremental” additions.
 - i. Projected annual amounts are 4,320 acre-feet for GWR Project, and 5,292 acre-feet for CSIP Area Replacement Water, and 248 acre-feet GWR to be held in drought reserve. These are approximate amounts based on average year conditions, but actual amounts will vary annually;
 - ii. Projected costs of Phase I water are to be defined in the Definitive Agreement, consistent with Sections 3(k) and 3(l) below and subject to third party review as discussed in “Miscellaneous” below;
 - iii. Except for the commitments under Section 3.j. below, the Parties agree that Salinas agricultural wash water may be utilized by PCA for the time period necessary for an average annual amount of 4,320 acre-feet for the GWR Project to be achieved from Phase I Additional Sources. However, PCA is obligated to endeavor to develop the additional supplies identified under Section 3.a. and transition a portion of the agricultural wash water for the benefit of CSIP and WRA.

- iv. The Definitive Agreement to only apply to wastewater from existing PCA members and derived from the PCA's 2001 Service Area and water sources identified in Sections 3.a. and 3.q. Any future additions or annexations to the PCA Service Area or future sources outside of the 2001 Service Area will be subject to future agreement(s).

- b. Phase I to be operational in 2017, but the Parties will adjust schedule for construction and operation if and as needed.

- c. WRA's participation in Phase I to be contingent upon its successful completion of the Proposition 218 process, if applicable.

- d. In 2014 WRA filed an application with the State Water Resources Control Board ("SWRCB") for water rights to appropriate waters of the Blanco Drain for the purpose of providing additional waters for CSIP and for domestic supplies within the Salinas River Valley; and, for water rights to appropriate waters of the Reclamation Ditch and Tembladero Slough for the purpose of providing additional waters for CSIP and for domestic supplies within the Salinas River Valley. The Parties agree that such water rights shall be retained exclusively by WRA. The Parties to pay pro rata all costs associated with WRA's procurement and retention of Blanco Drain, Tembladero Slough, and Reclamation Ditch water rights. The Parties agree to work jointly on obtaining the water rights. The Parties may agree to apply for water rights in increments to facilitate issuance of permits.

- e. CSIP participants to be separately responsible for the tertiary treatment costs of the water processed and delivered through the SVRP. GWR participants to be separately responsible for the costs of advanced water treatment through the GWR facilities.

- f. The Parties to work cooperatively and collaboratively among themselves, in good faith, to determine appropriate crop irrigation water quality standards for water supplies.

- g. The Parties to work cooperatively and collaboratively among themselves, in good faith, to determine if, when, and how much of each water will be collected and sent to the RTP for treatment.

- h. Excess flows to be made available to each other Party, as may be desired. "Excess flows" to be defined in the Definitive Agreement, but are generally accepted to mean waters available for treatment at the SVRP or GWR facilities, but not desired by the project participants to be processed and delivered at that period of time.
- i. PCA to have rights to the first 4,320 acre-feet annually of the new "incremental" waters defined under Section 3.a. above, plus amounts in the six winter months to produce 200 acre-feet to be placed in drought reserve. WRA can request that PCA schedule withdrawals from the drought reserve in lieu of processing the incremental waters in order to make a like amount available to CSIP in time of need. Withdrawals will be limited to no more than the amount on deposit in the drought reserve.
- j. WRA to receive the agricultural wash water on terms similar to the *Produce Wash Water Agreement, dated 1 July 2014*, in 2015, 2016, and 2017 and until the GWR project becomes operational.
- k. PCA, at its cost and expense, to use its consultant to prepare a comprehensive rate analysis, to devise appropriate Interruptible Rates that will likely be less expensive than current non-Interruptible Rates for pumping, odor control, primary and secondary treatment. Separate Interruptible Rates to apply to each water source, but each separate Interruptible Rate to be subject to future escalation consistent with standard factors for operation and maintenance inflation over time. WRA will not pay rates for water it does not receive.
- l. Capital costs to be shared by PCA and WRA proportional to the waters projected to be made available on an average annual basis. Fixed pro rata capital costs to be paid annually by the Parties, irrespective of water requested or received. However, the calculation of pro rata shares of capital costs to be based only upon facilities actually built and average annual water expected to be made available vis the constructed facilities. In recognition of potential, yet undetermined, benefits of the existing operations of the Salinas Industrial Ponds to the recharge of the groundwater basin and the Salinas River for purposes of calculating water made available to CSIP 33% of the water attributable to the Salinas agricultural wash water would not be counted in the calculation of the proportional cost to WRA. Annual recovery of fixed capital costs to include any annual capitalized costs for facilities leased by PCA for the furnishing of water to the Parties.

- m. PCA subject to concurrence by the rate study to waive all capacity charges for use of water on an Interruptible basis from presently identified water sources to be included in Phase I or Phase II.
- n. Pursuant to subsequent agreement and lease, PCA and Salinas to negotiate a separate agreement and lease and develop a seasonal working protocol for diversion of Salinas Industrial Ponds (Agricultural Wash Water) and storm water as allowed by available storage. PCA to pay Salinas an annual lease payment to be recovered in the cost of water in accord with criteria to be established in the Definitive Agreement.
- o. PCA, if it uses tertiary treated water for the GWR Project, to comply with all applicable requirements set forth in Contract No. 5-07-20-W1284, between the Bureau of Reclamation and WRA including, but not limited to, those contained in Paragraphs 10b and 10c, all at PCA's sole cost and expense.

Phase II – CSIP Area Additional Water

- p. Phase II to provide water from newly identified sources that are “incremental” additions over and above the incoming wastewater flows as identified in the 1992 Agreement, as amended, and may consist of diversion of remaining Tembladero Slough water, potential future advanced treated water, and UniKool water.
- q. Phase II to approximate up to 3,754 AFA of new water.
- r. Phase II to be operational by 2022.
- s. Projected costs of Phase II will be determined in the future, consistent with engineering feasibility analysis, preliminary design, and third party rate consultant analysis.
- t. Phase II would be contingent on its successful completion of the Proposition 218 process, if applicable.

4. Accounting Protocols

PCA to enter into a separate agreement with WRA by December 31, 2014 to achieve the following:

- a. PCA's adoption of activity-based costing for all its CSIP, SRDF and SVRP activities.
- b. Revision of the various financial protocols currently utilized to achieve one standard protocol for each of CSIP, SRDF and SVRP.
- c. Allocation methodologies for costs associated with CSIP, SRDF, and SVRP.
- d. An annual audit of PCA's financial transactions related to CSIP, SRDF and SVRP at WRA expense.
- e. PCA to credit to the CSIP and SVRP accounts any pro rata revenues it receives from byproducts of tertiary treated wastewater.
- f. A third-party agreed upon by both PCA and WRA to be hired to design and implement these Accounting Protocols.

MISCELLANEOUS

1. This Memorandum of Understanding is intended to provide a framework for negotiation of a Definitive Agreement. This Memorandum is not intended to create binding contractual obligations and other essential terms in addition to those set forth in this Memorandum are to be negotiated and agreed upon before the Parties reach a Definitive Agreement.
2. It is recognized and acknowledged that the Parties may not agree upon or enter into a Definitive Agreement. In such an event, no Party shall make any claim against any other Party related to the failure to enter into a Definitive Agreement.
3. An independent third-party review of proposed capital and operating costs to be performed before WRA Board approval of the Definitive Agreement.
4. The term of the Definitive Agreement to be 30 years or as subsequently agreed upon in the Definitive Agreement.
5. The Definitive Agreement may result in an Amendment to the 1992 Agreement and the amendments thereto. All previous Amendments will be reviewed to ensure conformity and continuity of relevant provisions. Amendment No.3 to be novated by the Definitive Agreement and any terms of Amendment No.3 that remain applicable will be restated in the Definitive Agreement.

6. The Definitive Agreement will incorporate standard contract language to govern enforcement and resolution of disputes.
7. This Memorandum of Understanding will expire the earlier of (i) execution of a Definitive Agreement, or (ii) March 31, 2015.
8. Individuals whose signatures appear on this document represent, warrant, and guarantee they are authorized to execute this document on behalf of those entities on whose behalf they purport to execute this document.

WITNESS, the Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, the Marina Coast Water District, and the Monterey Peninsula Water Management District entered into this Memorandum of Understanding as of the date first written above

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

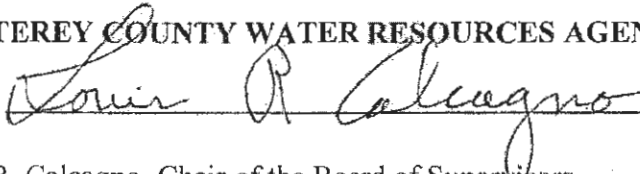
By: _____



Dennis Allion, Board Chair

MONTEREY COUNTY WATER RESOURCES AGENCY

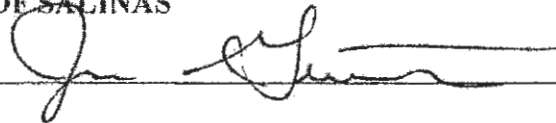
By: _____



Louis R. Calcagno, Chair of the Board of Supervisors

CITY OF SALINAS

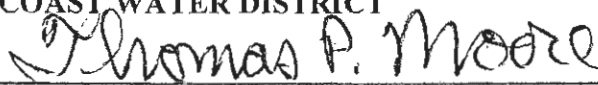
By: _____



Joe Gunter, Mayor

MARINA COAST WATER DISTRICT

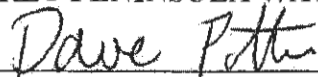
By: _____



Thomas P. Moore, Board President

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

By: _____



David Potter, Board Chair

PRODUCE WASH WATER UTILIZATION AGREEMENT

This **PRODUCE WASH WATER UTILIZATION AGREEMENT** (hereinafter referred to as "Utilization Agreement") is made this 1st day of July 2014, by and between Monterey Regional Water Pollution Control Agency (hereinafter referred to as "PCA"), a California Joint Powers Authority created on _____ pursuant to _____; and, the Monterey County Water Resources Agency (hereinafter referred to as "WRA"), established April 11, 1995 by the Monterey County Water Resources Agency Act; and, the City of Salinas (hereinafter referred to as "City"), a California charter city and municipal corporation, sometimes collectively referred to herein as "the Parties."

RECITALS

- a. PCA entered into an agreement with WRA, dated June 16, 1992, for construction and operation of a tertiary treatment system (the "1992 Agreement"), which agreement has subsequently been amended; and,
- b. In 2013 the Castroville Seawater Intrusion Project (CSIP) utilized 24,764 acre-feet of water, of which 15,485 acre-feet was supplied by PCA under the terms of the 1992 Agreement, 6,094 acre-feet was obtained from the Salinas River Diversion Facility (SRDF), and 3,185 acre-feet was obtained from groundwater wells; and,
- c. In 2014, the SRDF does not currently produce water for CSIP, and thus additional water is required from a new source and/or from additional groundwater pumping; and,
- d. One of the long term goals of the parties to this Utilization Agreement is to strongly curtail and potentially eliminate groundwater pumping in the existing CSIP Service Area, and in an expanded CSIP Service Area, to help halt seawater intrusion; and,
- e. The City owns and operates an Industrial Wastewater Treatment Facility (IWTF) located at Davis Road that receives and treats produce wash water by aeration and through percolation and evaporation; and,
- f. The City has rights and access to approximately 4,000 acre-feet/year of produce wash water that it receives and treats at its IWTF; and,
- g. In recognition that existing conditions have created a situation where the City's provision of produce wash water from its IWTF to PCA through an extended test period would replace water that is not currently available from the SRDF and therefore benefit the CSIP, PCA and the City have agreed to enter into an extended test period of sixty (60) days pursuant to which the City has agreed to provide produce wash water from its IWTF to PCA for the sole purpose of determining the viability of combining produce wash water with sanitary sewer water for use in CSIP; and,

- h. The City and PCA have agreed that the incremental cost of treatment of the City's produce wash water during the extended test period will be \$ 179/acre-foot; and,
- i. On April 25, 2014, California Governor Jerry Brown declared a continuing state of emergency due to the severe drought conditions throughout the State; and,
- j. The City has determined that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code § 21080(b)(4) and CEQA Guidelines section 15269(c) as an action necessary to prevent or mitigate an emergency, and further, the City has determined that providing produce wash water from its IWTF to PCA for the duration of the extended test period will not result in a direct or reasonably foreseeable direct or indirect physical change in the environment; and,
- k. The City, PCA and WRA understand and acknowledge the need to work cooperatively and collaboratively among themselves and with other regional stakeholders and interested parties to develop a long-term, comprehensive strategy and agreement that makes the best use of all the water resources in the County of Monterey to address the multiple water needs of Monterey County; and,
- l. The City is willing to provide produce wash water for use by CSIP beyond the term of the two-month test period, with the understanding that the Parties will work to accomplish the goals set forth in the above recitals.

NOW, THEREFORE, and in consideration of the foregoing recitals, the Parties hereby agree as follows:

- 1. Effective July 1, 2014, and continuing until October 31, 2014, City shall provide produce wash water from its IWTF to PCA which in turn will supply additional treated secondary water to the SVRP to supplement the other sources of water supplied to the CSIP system. The City is not obligated by this Utilization Agreement to continue providing produce wash water after October 31, 2014.
- 2. The PCA is not obligated to continue to treat and supply produce wash water after October 31, 2014 under this Utilization Agreement. The following conditions are applicable to transfer and treatment during the extended test period:
 - a. Point of transfer shall be the PCA-installed shunt located ahead of the Salinas Industrial Ponds.
 - b. Monthly flows from the processing entities will be calculated and reviewed by PCA Source Control Division until a permanent Flow meter can be installed in the newly constructed shunt (no later than 12/31/14).

- c. City agrees to pay costs associated with its CEQA emergency action to treat produce wash water. The PCA will invoice the City for treatment costs, and the City will pay the PCA the invoiced amount within ninety (90) days of receipt of the invoice. The rate for the treatment will be \$179/AF. This rate will be in effect until October 31, 2014.
 - d. Contract source control monitoring of the processing facilities will continue as contracted by City.
3. The City shall notify PCA immediately should the City become aware of any non-compliant discharge from any of the industrial facilities. Non-compliant discharges are subject to being rejected by the RTP and will be redirected to the Industrial Pond Facility.
4. Miscellaneous:
 - a. In entering into this Utilization Agreement, PCA, WRA and City each represent that it has read all of the terms of this Utilization Agreement and the terms of this Utilization Agreement are fully understood and voluntarily accepted by each.
 - b. The Parties acknowledge that each Party has reviewed this Utilization Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Utilization Agreement.
 - c. The effective date of this Utilization Agreement shall be the date first written hereinabove ("Effective Date").
 - d. This Utilization Agreement sets forth the entire understanding of the Parties in connection with the subject matter herein. None of the Parties have made any statement or inducement for the other to enter into this Agreement, except as is expressly set forth in this Utilization Agreement. It is expressly understood and agreed that this Utilization Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by writing, duly executed by authorized representatives of the Parties hereto. The Parties agree that they will make no claim at any time or place that this Utilization Agreement has been orally altered or modified or otherwise changed by oral communication of any kind of character.
 - e. This Utilization Agreement shall be governed by the laws of the State of California. Venue shall be in the County of Monterey.
 - f. In the event any portion of this Utilization Agreement is deemed to not be enforceable, or is in conflict with applicable law, the remainder of this

APPROVED AS TO FORM:

Jesse J. Avila, Deputy County Counsel

CITY OF SALINAS

By: _____

Its: _____

APPROVED AS TO FORM:

Chris J. Hall

~~Deputy~~ City Attorney



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: WRAA 15-006

March 24, 2015

Introduced: 3/20/2015

Current Status: Agenda Ready

Version: 1

Matter Type: WR Agreement

- a. Rescind Resolution Number 14-281; and
- b. Approve and authorize the Chair to sign a Memorandum of Agreement between the Water Resources Agency and the National Steinbeck Center

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Rescind Resolution Number 14-281; and
- b. Approve and authorize the Chair to sign a Memorandum of Agreement between the Water Resources Agency and the National Steinbeck Center

SUMMARY:

The proposed Memorandum of Agreement (MOA) formalizes the previously expressed intention of the Agency to facilitate the sale of the National Steinbeck Center to California State University, Monterey Bay. The Agency is to receive, and is requested to pay \$6,102.00 to the National Steinbeck Center after processing by the Monterey County Auditor/Controller.

DISCUSSION:

The former Salinas Redevelopment Agency ("RDA") and the National Steinbeck Center, a California non-profit public benefit corporation ("NSC"), entered into a Loan Agreement, dated as of June 15, 2010 ("Loan Agreement"), regarding a \$484,715.65 loan to NSC to fund debt service payments on the bonds sold for the construction of the National Steinbeck Center building at One Main Street in Salinas. This Loan Agreement is considered an asset of the former RDA and must be liquidated, consistent with the terms of the Dissolution Act.

The California Department of Finance (DOF), requires that all affected taxing agencies within a specified, and approved, redevelopment area receive a percentage of the proceeds of sales of assets, in partial recompense for the former redevelopment agency's use of tax increment. The amount identified in the Tax Increment Distribution Report provided by the City of Salinas and approved by the DOF indicates that the Water Resources Agency is to receive an un-anticipated amount of approximately \$6,102 dollars, from the sale of the National Steinbeck Center to California State University, Monterey Bay.

On October 7, 2014, at the request of the City of Salinas and the NSC, the Agency adopted Resolution No. 14-281, wherein the Agency recognized the public benefit to the sale of the National Steinbeck Center to CSUMB and agreed to forgive the Loan and "forgo" any proceeds resulting from the sale. Subsequently, the DOF disallowed the "forgiveness" of the Loan and required that sale proceeds must go through the allocation process spelled out in the Dissolution Act. Accordingly, the proposed Memorandum of Agreement will reconfirm the Agency's intent to contribute its share of sales proceeds by creating an enforceable agreement promising

to pay over to the National Steinbeck Center the proceeds received by the County. Because the Loan Agreement will not be terminated, and because the Memorandum of Agreement specifically addresses payment of proceeds, it is felt that rescission of the prior Resolution is appropriate.

OTHER AGENCY INVOLVEMENT:

The County of Monterey County is also being requested to receive and to pay to NSC the County's anticipated share of sale proceeds, of approximately \$68,264.00. Thus, the amount of \$74,366.00, representing the combined share of the County and Water Resources Agency from sale proceeds, would go to the National Steinbeck Center.

FINANCING:

Approval of this MOA will not require a draw against the General Fund, but would preclude the receipt of un-anticipated revenues of approximately \$6,102 dollars during the FY 2015-16.

Prepared by:

David L. Spaur, CEcD, EDFP
Economic Development Director, Ext. 5387

Approved by:

David E. Chardavoyne, General Manager
Attachment:
WRA Memorandum of Agreement

**MEMORANDUM OF AGREEMENT
BETWEEN THE NATIONAL STEINBECK CENTER
AND
THE WATER RESOURCES AGENCY OF MONTEREY COUNTY**

This MEMORANDUM OF AGREEMENT (“AGREEMENT”) is made on _____, 2015, by and between the National Steinbeck Center (“NSC”), and the Monterey County Water Resources Agency (“AGENCY”).

RECITALS

A. The Water Resources Agency (“AGENCY”) is considered an “affected taxing entity” under the Community Redevelopment Law (Health and Safety Code sections 33000, et seq.), with regard to the Project Area; and

B. Effective June 29, 2011, the Community Redevelopment Law was significantly amended by the Dissolution Act (ABX 1 26), which had the effect of dissolving redevelopment agencies and requiring that assets and debts of redevelopment agencies be liquidated and funds transferred to “affected taxing agencies;” and

C. On October 7, 2014, the Agency adopted Resolution 14-XXX, to support establishing a California State University of Monterey Bay campus in downtown Salinas and to forgo the receipt of unanticipated tax revenue of approximately \$6,102.00 from the sale of the National Steinbeck Center to California State University Monterey Bay; and

D. The Agency has been informed that the State Department of Finance has required the reallocation of sales proceeds rather than their “forgiveness;” and

E. The Water Resources Agency wishes to reconfirm its intent to forgo the Agency’s share of un-anticipated tax revenue, as well as its determination that sale of the National Steinbeck Center to California State University Monterey Bay is in the “best interests” of the National Steinbeck Center, the City of Salinas’ Downtown Vibrancy Plan and educational interests of California State University, Monterey Bay, and ultimately, the Agency’s best interests.

**NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES
HERETO AS FOLLOWS:**

AGREEMENT

1. Sale Proceeds Collection and Remittance

Within 10 business days of receipt of its share of the proceeds of the sale of the National

Steinbeck Center to California State University Monterey Bay, the County shall remit the same to the National Steinbeck Center, at the following address:

National Steinbeck Center
ADDRESS
Salinas, CA 93901
Attn: NAME

2. Amendment by Written Recorded Instrument. This Agreement may be amended or modified in whole or in part, only by written instrument executed by both of the parties.

3. Governing Law. This Agreement shall be governance by and interpreted by and in accordance with the laws of the State of California

4. Interpretation. It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and the neither party is to be deemed the party which prepared the Agreement within the meaning of Civil Code Section 1654.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and Year set out opposite their respective signatures.

NATIONAL STEINBECK CENTER

Date: _____

By: _____
Executive Officer
Lori Wood

WATER RESOURCES AGENCY

Date: _____

By: _____
Chair, Water Resources Agency

APPROVED AS TO FORM:

By: _____

Date: _____



Monterey County Water Resources Agency

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

- a. Adopted Resolution No. 14-281 to support the sale of the Steinbeck Center to California State University of Monterey Bay, to establish a campus in downtown Salinas and to forego the receipt of un-anticipated tax revenue estimated to be \$6,102.00 from the sale of the Steinbeck Center to California State University, Monterey Bay; and
- b. Authorized the General Manager, or his designee, to sign and approve all documents related to foregoing \$6,102.00 in revenue.

PASSED AND ADOPTED on this 7th day of October 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on October 7, 2014.

Dated: October 7, 2014
File Number: WRA RES 14-010

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By *Jenise Hancock*
Deputy

**Before the Board of Supervisors of the Monterey County Water Resources Agency
County of Monterey, State of California**

Resolution No.14-281

A Resolution to forego the receipt of approximately \$6,102.00 in)
Tax Increment Revenue from the sale of the Steinbeck Center by)
The City of Salinas to California State University, Monterey Bay...)

WHEREAS, the City of Salinas had previously adopted the Salinas Central City Redevelopment Project Area ("Project Area") and had charged the Salinas Redevelopment Agency ("Salinas RDA") with its implementation; and

WHEREAS, the Monterey County Water Resources Agency ("Agency") is considered an "affected taxing entity" under the Community Redevelopment Law (Health and Safety Code sections 33000, et seq.), with regard to the Project Area; and

WHEREAS, one of the implementing activities of the Salinas RDA within the Project Area was the development of the National Steinbeck Center ("Steinbeck Center"), located on One Main Street; and

WHEREAS, the Salinas RDA used tax increment funding as part of its efforts to develop the Steinbeck Center; and

WHEREAS the Salinas RDA and the National Steinbeck Center, a California non-profit public benefit corporation ("NSC"), entered into a Loan Agreement, dated as of June 15, 2010 ("Loan Agreement"), regarding a \$484,715.65 loan to NSC by the Salinas RDA ("Loan") to fund debt service payments on the bonds sold for the construction of the Steinbeck Center building that the NSC was unable to make in 2009 and 2010; and

WHEREAS, effective June 29, 2011, the Community Redevelopment Law was significantly amended by the Dissolution Act (ABX 126), which had the effect of dissolving redevelopment agencies and requiring that assets and debts of redevelopment agencies be liquidated and funds transferred to "affected taxing agencies;" and

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional; and

WHEREAS, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Salinas RDA, were dissolved on February 1, 2012, and Successor Agencies were designated and vested with the responsibilities of winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, on January 10, 2012, the City Council ("City Council") of the City of Salinas ("City") adopted Resolution No. 20142 accepting for the City the role of Successor Agency to the Salinas RDA ("Salinas Successor Agency"); and

WHEREAS, the Salinas Oversight Board ("Oversight Board") for the Salinas Successor Agency has been duly constituted pursuant to the Dissolution Act, with seven representatives of those agencies that receive property tax dollars from the properties within the former Salinas Redevelopment Project

Areas, including two members representing County interests; and

WHEREAS, application of Section 34181 of the Health and Safety Code, as amended by the Dissolution Act, requires that the Oversight Board shall direct the Salinas Successor Agency to determine if any agreement between the Salinas RDA and private parties should be renegotiated to reduce liabilities, and to present a proposed termination agreement or amended agreement to the Oversight Board for approval; and

WHEREAS, the Successor Agency requested the Oversight Board's policy direction on NSC's request to terminate or amend the Loan; and

WHEREAS, the Oversight Board considered the documentary and testimonial evidence presented by the National Steinbeck Center at the public hearing on June 18, 2014 and unanimously approved resolution 2014-35, thereby approving the termination of the Loan Agreement, and on June 19, 2014, submitted said Resolution to the State Department of Finance ("DOF"); and

WHEREAS, on August 27, 2014, in a conference call with the DOF, it was argued that the "best interest" of most taxing entities is to contribute the long-term sustainability of the Steinbeck Center, forgive the loan and assist the NSC to partner with the California University Monterey Bay to buy the Steinbeck Center; and at that point, the DOF suggested, among other things, that the NSC receive a resolution from each taxing entity agreeing that forgiveness of the loan is in the best interest of the taxing entities; and

WHEREAS, the Monterey County Water Resources Agency would have an opportunity to receive unanticipated property tax pass-through payment of approximately \$6,102 of a portion of property taxes assessed against properties within the Project Area, including the National Steinbeck Center; and

WHEREAS, the Monterey County Water Resources Agency has been requested by the City of Salinas Successor Agency to make a determination that forgiveness of the Agency's share of unanticipated tax revenue is in the "best interests" of the Steinbeck Center, the Downtown Vibrancy Plan and educational interests of California State University, Monterey Bay, and

WHEREAS, on October 7, 2014, the Monterey County Water Resources Agency, as an affected taxing entity, held a public meeting to consider the public benefit and public purpose of the Steinbeck Center and a new campus of the CSU, Monterey Bay in Downtown.

NOW THEREFORE, BE IT RESOLVED, that the Monterey County Water Resources Agency, as an "affected taxing entity" and recipient of property tax revenues from properties located within the Salinas Redevelopment-Central City Project Area, hereby finds, resolves, and determines as follows:

SECTION 1. The foregoing recitals together with the staff report and attachments, and information provided by the Salinas Successor Agency and the National Steinbeck Center, form the basis for the approvals, findings, resolutions, and determinations set forth below.

SECTION 2. The National Steinbeck Center is a valuable public, community and regional asset which provides both economic and educational benefits for all of the taxing agencies.

SECTION 3. The location of a downtown Salinas campus for CSU Monterey Bay is a benefit to both the local community and the Agency as a whole, in that expansion of the CSU will allow more

residents to increase their education and potential earning income.

SECTION 4. The public purposes and public benefits of retaining the Steinbeck Center, and having a new campus location for the CSU Monterey Bay at the Steinbeck Center far outweigh the receipt of the estimated \$6,102.00, and forgiveness of the tax increment realized from the sale is in the best interests of the taxing entities.

SECTION 5. The Monterey County Water Resources Agency requests that the Salinas Successor Agency and Oversight Board reconvene on the matter of the NSC Loan Agreement, and use this Resolution as evidence of the Agency's support for the termination of the Loan Agreement to the State Department of Finance.

SECTION 6. This Resolution shall take effect immediately.

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Potter and carried this 7th day of October 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on October 7, 2014.

Dated: October 7, 2014
File Number: WRA RES 14-010

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By 
Deputy

ACTION ITEMS



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: WRAG 15-011

March 24, 2015

Introduced: 3/20/2015

Current Status: Agenda Ready

Version: 1

Matter Type: WRA General

Consider receiving a report on potential funding opportunities for the Interlake Tunnel Project; and, provide direction to Staff.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Supervisors:

Receive a report on potential funding opportunities for the Interlake Tunnel Project; and, provide direction to Staff.

SUMMARY/DISCUSSION:

The County Administrative Office - Intergovernmental and Legislative Affairs Division employs the Sacramento firm Nossaman LLP to assist in obtaining grant funding for high priority projects and programs. In this report, Jennifer Capitolo of Nossaman will present her findings related to possible funding opportunities related to the Water Resources Agency's proposed Interlake Tunnel Project.

OTHER AGENCY INVOLVEMENT:

The Water Resources Agency prepared this report with information provided by the County Administrative Office - Intergovernmental and Legislative Affairs Division and Nossaman LLP.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

FINANCING:

The County Administrative Office - Intergovernmental and Legislative Affairs Division funds the contract with Nossaman LLP within their FY14-15 budget allocation.

Prepared by: David E. Chardavoyne
for Robert Johnson, Acting Assistant General Manager, (831) 755-4860

Approved by: David E. Chardavoyne
David E. Chardavoyne, General Manager, (831) 755-4860

Attachment:

Matrix for Interlake Tunnel Project Potential Funding Sources

Funding Programs for the Interlake Tunnel Project

Program	Department/ Agency	Eligible Uses of Funds	Maximum Assistance	Pros	Cons	Timing	Prioritization/Next Steps
IRWMP Prop 1	Department of Water Resources	Projects that implement IRWM plans, projects and programs.	TBD	<ul style="list-style-type: none"> Grant. \$810 million available statewide. \$43 million set aside for Central Coast Funding Area. \$51 million set aside for priority statewide projects that benefit economically distressed areas or underrepresented communities within regions. Opportunity to participate in the stakeholder process for the development of new grant guidelines. Asm Alejo advocated for an additional \$12 million for the Central Coast Funding Area in Proposition 1 for the Interlake Tunnel Project. The project must submit through the regional process and then compete in the state process to receive these funds. 	<ul style="list-style-type: none"> Match Required. Competitive process. Complicated application process. If consultant needed to complete application, associated cost. County may not be able to meet project readiness criteria. The PSP will identify a date by which construction must begin; the County may not be able to meet this date. 	TBD – Early 2016	Priority -1 <ul style="list-style-type: none"> Works towards project readiness including planning, design, engineering, environmental, and matching funds. Evaluate other projects in the region that will be submitting. Meet with DWR to evaluate project.
Clean Water SRF	State Water Resources Control Board	Stormwater treatment and diversion, sediment and erosion control, stream restoration, land acquisition, septic system replacement, agricultural drainage.	None	<ul style="list-style-type: none"> Simple application process. No maximum award. Large maximum loan/grant award. Very low interest rate. 	<ul style="list-style-type: none"> Loan/Grant Combo. No repayment sources for loan. 	Applications accepted on an ongoing basis.	Priority -2 <ul style="list-style-type: none"> Explore repayment options. Meet with State Board.
Drinking Water SRF	State Water Resources Control Board	Water treatment facilities, replace aging infrastructure, planning studies, consolidation of water systems, etc.	\$20,000,000	<ul style="list-style-type: none"> Simple application process. Large maximum loan/grant award. Very low interest rate. 	<ul style="list-style-type: none"> Loan/Grant Combo. No repayment sources for loan. 	Applications accepted on an ongoing basis.	Priority -3 <ul style="list-style-type: none"> Explore repayment options. Meet with State Board.

Program	Department/ Agency	Eligible Uses of Funds	Maximum Assistance	Pros	Cons	Timing	Prioritization/Next Steps
Infrastructure State Revolving Fund	Infrastructure Bank	Construct and/or repair water collection, supply, and treatment systems, including equipment.	\$25,000,000	<ul style="list-style-type: none"> Simple application process. Large maximum loan/grant award. Very low interest rate. 	<ul style="list-style-type: none"> Loan. No repayment sources for loan. 	Applications accepted on an ongoing basis.	Priority -4 <ul style="list-style-type: none"> Explore repayment options. Send scheduling request for Executive Director to meet with Ad Hoc Committee.
Regional Conservation Partnership Program (RCPP)	US Department of Agriculture	Restoration and sustainable use of natural resources on regional or watershed scales.	TBD, last round max was \$20 million per project	<ul style="list-style-type: none"> Grant. The USDA is willing to offer technical assistance to improve the County's previous grant application. Large maximum grant award amount. 	<ul style="list-style-type: none"> \$200 million available nationwide, only half of the amount available last round. Competitive process. The Water Resources Agency submitted a concept that was not successful. The previous application will need to be re-written. 	TBD – Late April 2015	Priority -5 <ul style="list-style-type: none"> Seek technical assistance from USDA. Re-evaluate submission. Meet with USDA in Salinas.
Water Storage Chapter 8 Prop 1	CA Water Commission/ Department of Water Resources	Water storage projects.	TBD	<ul style="list-style-type: none"> Grant. \$2.7 billion available statewide. Opportunity to participate in the stakeholder process. 	<ul style="list-style-type: none"> Match Required. Competitive process. Projects must benefit the Delta. 	TBD in 2017	Priority -6 <ul style="list-style-type: none"> Monitor the stakeholder process. Participate in the scoping survey. Explore the opportunity for coalition building.
IRWMP Prop 84	Department of Water Resources	Projects that implement IRWMP plans, projects and programs.	TBD	<ul style="list-style-type: none"> Grant. \$1 billion available statewide with \$220 million available statewide for third round of Prop 84 funding. \$52 million available for Central Coast Region with \$5 million available for third round of Prop 84 funding. 	<ul style="list-style-type: none"> Match Required. Competitive process. Complicated application process. If consultant needed to complete application, associated cost. Limited amount of funding available for projects in the Central Coast. Project must start construction by April 1, 2016. 	Fall 2015	At the request of the Ad Hoc Committee, this opportunity is no longer under consideration given the low dollar amount available and the inability to meet the construction start date.

* Per the request of the Ad Hoc Committee, Nossaman will update this funding opportunity list with natural resource grant opportunities regarding white bass eradication that could be pursued in partnership with Department of Fish and Wildlife.



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: WRAG 15-010

March 24, 2015

Introduced: 3/18/2015

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

Consider:

- a. Approve a Feasibility Cost Sharing Agreement (FCSA) between the U.S. Army Corps of Engineers, Monterey County Water Resources Agency and Santa Cruz County Flood Control and Water Conservation District for the Pajaro River Levee Project;
- b. Certifying the Authority to enter into said agreement;
- c. Certifying against Lobbying in regards to Federal funding, satisfying the Non-Federal Sponsor's obligation under the Agreement; and,
- d. Authorizing the General Manager of Monterey County Water Resources Agency to execute said Agreement once the full Federal funding amount is identified.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Supervisors:

- a. Approve a Feasibility Cost Sharing Agreement (FCSA) between the U.S. Army Corps of Engineers, Monterey County Water Resources Agency and Santa Cruz County Flood Control and Water Conservation District for the Pajaro River Levee Project;
- b. Certify the Authority to enter into said agreement;
- c. Certify against Lobbying in regards to Federal funding, satisfying the Non-Federal Sponsor's obligation under the Agreement; and,
- d. Authorize the General Manager of Monterey County Water Resources Agency to execute said Agreement once the full Federal funding amount is identified.

SUMMARY/DISCUSSION:

As a Non-Federal Sponsor (NFS), along with Santa Cruz County Flood Control and Water Conservation District, preliminary engineering and design and economic and environmental analyses were funded under a November 26, 2007 Design Agreement between the NFS and COE, as part of the General Reevaluation Report (GRR)/Environmental Impact Statement (EIS) to be prepared by the COE. The agreement cost-shared the "total design costs" (\$10.8 million) at a 75 percent federal to 25 percent (NFS) cost ratio. NFS sought and obtained state grant funding through Proposition 1E to match its maximum cost share contribution of \$2.7 million (Monterey County share \$1.35 million). NFS have been and will be fully reimbursed up to that amount through grant funding.

Under new COE regulations, this proposed new FCSA, a 50/50 rather than 75/25 percent cost share ratio between COE and NFS is required. The total project cost over a two-three year study period remaining under new COE procedures is estimated at \$2.0M. Recently the NFS have been advised

that \$700K has been allocated in the COE FFY 2015 work plan to complete the GRR, MCWRA match is \$250K for this initial period. MCWRA share will increase incrementally up to a maximum of \$500K over the next two to three year budget cycles. All NFS amounts will continue to be reimbursed through Prop 1E.

A tentatively selected project will be chosen by the COE this summer and included in their General Re-evaluation Report (GRR), which serves as the NEPA/CEQA environmental document. This document is scheduled to be distributed for public comment this fall.

Several draft alternatives under consideration remain objectionable to Santa Cruz County or Monterey County staffs due to higher levels of flood risk, inequitable protection levels or unmitigated impacts on the right-bank near the confluence with Salsipuedes Creek in Santa Cruz County.

OTHER AGENCY INVOLVEMENT:

County Counsel has conducted preliminary reviews during different phases of this effort. State and Federal regulatory agencies will participate during the feasibility development phase. Board of Directors of the Santa Cruz County Flood Control and Water Conservation District approved this agreement pending the full Federal funding is provided in the agreement.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

FINANCING:

The total estimated cost to complete this effort is \$2.0 million. The Water Resources Agency financial commitment to participate through existing funding will continue provided reimbursement from Prop 1E is available.

Prepared by: David E. Chardavoyne
for Brent Buche, Assistant General Manager, (831) 753-4860

Approved by: David E. Chardavoyne
David E. Chardavoyne, General Manager, (831) 753-4860

Attachments:

Agreement Between the Department of the Army and Monterey County Water Resources Agency and Santa Cruz County Flood Control and Water Conservation District - Zone 7 for the General Reevaluation Report for Pajaro River, California
Design Agreement between the Department of the Army and Monterey County Board of Supervisors and Board of Directors for Santa Cruz County Flood Control and Water Conservation District for Design for the Pajaro River, California

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MONTEREY COUNTY WATER RESOURCES AGENCY
AND
SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT –
ZONE 7
FOR THE
GENERAL REEVALUATION REPORT
FOR
PAJARO RIVER, CALIFORNIA

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, San Francisco District and Monterey County Water Resources Agency represented by the General Manager and Santa Cruz County Flood Control and Water Conservation District – Zone 7 represented by the Chairperson, Board of Directors (hereinafter the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, construction of the Flood Protection Project on the Pajaro River at Monterey County and Santa Cruz County, California was authorized by Section 203 of the Flood Control Act of 1966, Public Law 89-789 (80 Stat. 1419);

WHEREAS, due to changed conditions or assumptions, the U.S. Army Corps of Engineers has determined that a feasibility study should be undertaken to reevaluate the authorized project, using current planning criteria and policies, to determine if the plan for the authorized project should be modified;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into an agreement (hereinafter the “Agreement”) to conduct such feasibility study (hereinafter the “Study” as defined in Article I.A. of this Agreement);

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the Study;

WHEREAS, the Non-Federal Sponsors desire to provide in-kind contributions (hereinafter the “*in-kind contributions*” as defined in Article I.K. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the Study;

WHEREAS, the Non-Federal Sponsors may provide up to 100 percent of their required contribution for the Study as *in-kind contributions*;

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

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsors through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsors, and facilitate the successful *Study*.

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

ARTICLE I – DEFINITIONS

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document, the General Reevaluation Report, when appropriate, recommends a coordinated and implementable solution for flood risk management at the Pajaro River, Santa Cruz and Monterey Counties, California as authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 491, 89th Congress, 2d Session, 1966. The term includes *in-kind contributions* described in paragraph K. of this Article.

B. The term “*total study costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to performance of the *Study*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the costs of *in-kind contributions* determined in accordance with Article II.E. of this Agreement; the Government’s costs of Agency Technical Review and other review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; the Government’s costs of preparation of a floodplain management plan; the Government’s supervision and administration costs; the Non-Federal Sponsors’ and the Government’s costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsors’ and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; any costs incurred as part of feasibility studies under any other agreement; the Non-Federal Sponsors’ costs of negotiating this Agreement; any costs of a contract for an Independent External Peer Review panel; or any costs of negotiating a design agreement for a project or separable element thereof.

C. The term “*study costs to be shared during the period of study*” shall mean the difference between *total study costs* and *excess study costs*.

D. The term “*excess study costs*” shall mean the difference between the most recent estimate of *total study costs* and the amount of *total study costs* specified in Article IV.A.1. of this Agreement, excluding any increase in *total study costs* that resulted from a change in Federal law or a change in the scope of the *Study* requested by the Non-Federal Sponsors or any increase in *total study costs* that otherwise was agreed upon in writing by the parties.

E. The term “*period of study*” shall mean the time from the effective date of this Agreement to the date that:

1. the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with policies and programs of the Administration, if the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan; or

2. the decision document for the study is duly approved by the Government, if the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan; or

3. the date that this Agreement is terminated in accordance with Article IX of this Agreement.

F. The term “*financial obligations to be shared during the period of study*” shall mean the financial obligations of the Government and the costs for *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *study costs to be shared during the period of study*.

G. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *study costs to be shared during the period of study* for *in-kind contributions*, as determined by the Government, and the Non-Federal Sponsors’ total contribution of funds required by Article II.C.1.b. of this Agreement to *financial obligations to be shared during the period of study*, as projected by the Government.

H. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

J. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsors, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

K. The term “*in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsors after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

L. The term “*fiscal year of the Non-Federal Sponsors*” shall mean one year beginning on July 1 and ending on June 30.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsors, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsors expeditiously shall perform or provide *in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. To the extent possible, the Government and the Non-Federal Sponsors shall conduct the *Study* in accordance with the *PMP*.

2. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the final approval of all *Study* products shall be exclusively within the control of the Government.

3. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for *in-kind contributions*, shall be exclusively within the control of the Government.

4. At the time the U.S. Army Engineer, San Francisco District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsors.

5. The Non-Federal Sponsors shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsors' issuance of such solicitations. To the extent possible, the Non-Federal Sponsors shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsors shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsors also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsors shall consider in good faith the comments of the Government but the contents of solicitations,

award of contracts or commencement of work on the *Study* using the Non-Federal Sponsors' own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsors.

6. At the time the Non-Federal Sponsors furnish a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsors for the *in-kind contributions*, the Non-Federal Sponsors shall furnish a copy thereof to the Government.

7. As of the effective date of this Agreement, \$_____ of Federal funds is currently projected to be available for the *Study*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Study*. Further, the Government's financial participation in the *Study* is limited to the Federal funds that the Government makes available to the *Study*.

B. The Government shall allocate *total study costs* between *study costs to be shared during the period of study* and *excess study costs*.

C. The Non-Federal Sponsors shall contribute 50 percent of *study costs to be shared during the period of study* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsors shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement will be less than the Non-Federal Sponsors' required share of 50 percent of *study costs to be shared during the period of study*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsors' required share prior to any consideration of the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article.

b. The Non-Federal Sponsors shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsors shall provide, the Government shall reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph G. of this Article, shall refund or reimburse to the Non-Federal Sponsors any contributions in excess of 50 percent of *study costs to be shared during the period of study* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *study costs to be shared during the period of study*: (a) the Non-Federal Sponsors' contribution of funds required by paragraph C.1.b. of this Article; (b) the amount of credit to be afforded for *in-kind contributions* pursuant to paragraph F. of this Article; and (c) the value of the Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement.

D. The Non-Federal Sponsors shall contribute 50 percent of *excess study costs* in accordance with the provisions of this paragraph.

1. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsors' required share prior to any consideration of the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article.

2. The Non-Federal Sponsors shall provide funds in the amount determined by this paragraph in accordance with Article IV.C.3. of this Agreement. To determine the contribution of funds the Non-Federal Sponsors shall provide, the Government shall reduce the amount determined in accordance with paragraph D.1. of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article.

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsors for *in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *in-kind contributions*.

1. Acceptance by the Government of *in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *in-kind contributions* are necessary for the *Study*.

2. The Non-Federal Sponsors' costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

3. The Non-Federal Sponsors' costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* are provided and the time the costs are included in *total study costs*.

4. The Government shall not include in *total study costs* any costs for *in-kind contributions* paid by the Non-Federal Sponsors using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

5. The Government shall not include in *total study costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government.

F. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article for the costs of *in-kind contributions* determined in accordance with paragraph E. of this Article. The credit for *in-kind contributions* first shall be afforded toward the amount of funds determined in accordance with paragraph C.1.a. of this Article. If the amount of credit afforded exceeds the amount of funds determined in accordance with paragraph C.1.a. of this Article, the remaining portion of credit to be afforded shall be

afforded toward the amount of funds determined in accordance with paragraph D.1. of this Article. However, the maximum amount of credit that can be afforded for *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article; the costs of *in-kind contributions* determined in accordance with paragraph E. of this Article; or 50 percent of *total study costs*.

G. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement of any costs of *in-kind contributions* determined in accordance with paragraph E. of this Article and included in *total study costs* that exceed the amount of credit afforded for *in-kind contributions* determined in accordance with paragraph F. of this Article and the Non-Federal Sponsors shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

H. Upon conclusion of the *period of study*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsors.

I. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

J. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government supports a project authorization, if authorization is required, and budgets for implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

ARTICLE III - STUDY COORDINATION TEAM

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

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

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; external peer review, if required; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of, scheduling, and

determining the value of *in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations.

E. The Non-Federal Sponsors' costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IV.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsors current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$2,000,000; the value of the Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement is projected to be \$120,000; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$880,000; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$0; the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$0; the Non-Federal Sponsors' contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$880,000; and the *non-Federal proportionate share* is projected to be 46.80 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

2. By July 1, 2015 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; *study costs to be shared during the period of study*; the value of the Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsors' contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsors'

contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement; the total contribution of funds required from the Non-Federal Sponsors for the upcoming contract and upcoming *fiscal year*; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsors shall provide the contribution of funds required by Article II.C.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsors in writing of the funds the Government determines to be required from the Non-Federal Sponsors to meet: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces through the first *fiscal year of the Non-Federal Sponsors*. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, San Francisco District L3" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the work on the *Study* is complete, the Government shall notify the Non-Federal Sponsors in writing of the funds the Government determines to be required from the Non-Federal Sponsors, and the Non-Federal Sponsors shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each *fiscal year of the Non-Federal Sponsors* in which the Government projects that it will make *financial obligations to be shared during the period of study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces for that *fiscal year of the Non-Federal Sponsors*. No later than 30 calendar days prior to the beginning of that *fiscal year of the Non-Federal Sponsors*, the Non-Federal Sponsors shall make the full amount of such required funds for that

fiscal year of the Non-Federal Sponsors available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations to be shared during the period of study as financial obligations to be shared during the period of study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' share of such financial obligations for the current contract or to cover the Non-Federal Sponsors' share of such financial obligations for work performed using the Government's own forces in the current *fiscal year of the Non-Federal Sponsors*, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, *study costs to be shared during the period of study*, and *excess study costs*. In addition, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsors' total required share of *study costs to be shared during the period of study* exceeds the Non-Federal Sponsors' total contributions provided thereto, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, San Francisco District, L3" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsors for *study costs to be shared during the period of study* exceed the Non-Federal Sponsors' total required share thereof, the Government, subject to the availability of funds and as limited by Article II.G. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsors are due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

3. Should the final accounting show that the Non-Federal Sponsors' total required share of *excess study costs* exceeds the Non-Federal Sponsors' total contributions provided thereto the Non-Federal Sponsors, within the applicable time frame described below, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, San Francisco District, L3" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

a. If the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan and:

i. the project or project modification is authorized for construction – then the payment shall be made no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. the project or project modification is not authorized for construction within 5 years after the date of the final Report of the Chief of Engineers concerning the project or project modification – then the payment shall be made no later than 5 years after the date of the final Report of the Chief of Engineers; or

iii. the *Study* is terminated and the project or project modification is not authorized for construction - then the payment shall be made no later than 2 years after such termination date.

b. If the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan, then the payment shall be made:

i. no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. no later than 5 years after the date the decision document is duly approved by the Government; or

iii. no later than 2 years after the date of the termination of the *Study*, whichever is earliest.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsors shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsors shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsors shall each allow the others to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

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

ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and none are to be considered the officer, agent, or employee of the others.

B. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights the other parties may have to seek relief or redress against that contractor either pursuant to any cause of action that the other parties may have or for violation of any law.

ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsors elect to terminate this Agreement.

B. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Study*.

C. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsors in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsors in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsors elect to terminate this Agreement.

D. In the event that one or more of the Non-Federal Sponsors elects to terminate its responsibilities under this Agreement, and the remaining Non-Federal Sponsor(s) elects to continue to participate in the *Study*, the Government shall negotiate in good faith with the remaining Non-Federal Sponsor(s) to effect a timely and productive conclusion to that portion of the *Study* pertaining to the area of statutory authority applicable for the remaining Non-Federal Sponsor(s). The Government shall prepare a revised *PMP* and revised estimate of *total study costs* to complete that portion of the *Study* of interest to the remaining Non-Federal Sponsor(s). If the remaining Non-Federal Sponsor(s) elects to complete the *Study*, this Agreement shall be amended to reflect the negotiated revisions to the scope of the *Study* defined in Article I.A. of this Agreement and the estimate of *total study costs* in Article IV.A.1. of this Agreement. Amendments to this Agreement made pursuant to this paragraph shall reflect credits for the contribution of funds and *in-kind contributions* provided previously by all of the *Study* sponsors and shall reflect task reductions made as a result of withdrawal of any *Study* sponsor.

E. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.C.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsors:

Monterey County Water Resources Agency
General Manager
893 Blanco Circle
Salinas, CA 93901

Santa Cruz County Flood Control and Water Conservation District – Zone 7
Director of Public Works
701 Ocean Street
Santa Cruz, CA 95060

If to the Government:

U.S. Army Corps of Engineers, San Francisco District
Deputy for Project Management
1455 Market St., 16th floor
San Francisco, CA 94103-1398

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

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

ARTICLE XI - CONFIDENTIALITY

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

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

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

DEPARTMENT OF THE ARMY

MONTEREY COUNTY WATER RESOURCES
AGENCY

BY: _____
John C. Morrow
Lieutenant Colonel, US Army
District Engineer

BY: _____
David E. Chardavoyne
General Manager

DATE: _____

DATE: _____

SANTA CRUZ COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT – ZONE 7

BY: _____
Supervisor Zach Friend
Chairperson, Board of Directors

DATE: _____

CERTIFICATE OF AUTHORITY

I, Charles J. McKee, do hereby certify that I am the principal legal officer of the Monterey County Water Resources Agency, that the Monterey County Water Resources Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Monterey County Water Resources Agency in connection with the feasibility study for the General Reevaluation Report for Pajaro River, California, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Monterey County Water Resources Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

Charles J. McKee
County Counsel

CERTIFICATE OF AUTHORITY

I, Dana McRae, do hereby certify that I am the principal legal officer of the Santa Cruz County Flood Control and Water Conservation District – Zone 7, that the Santa Cruz County Flood Control and Water Conservation District – Zone 7 is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Santa Cruz County Flood Control and Water Conservation District – Zone 7 in connection with the feasibility study for the General Reevaluation Report for Pajaro River, California, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Santa Cruz County Flood Control and Water Conservation District – Zone 7 have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

Dana McRae
County Counsel

CERTIFICATION REGARDING LOBBYING

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

David E. Chardavoyne
General Manager
Monterey County Water Resources Agency

DATE: _____

CERTIFICATION REGARDING LOBBYING

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

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

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This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Supervisor Zach Friend
Chairperson, Board of Directors
Santa Cruz County Flood Control and Water Conservation District – Zone 7

DATE: _____

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MONTEREY COUNTY BOARD OF SUPERVISORS
AND
BOARD OF DIRECTORS FOR SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT
FOR
DESIGN
FOR THE
PAJARO RIVER, CALIFORNIA

THIS AGREEMENT is entered into this 26 day of November, 2007, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, San Francisco District, and the Monterey County Board of Supervisors (hereinafter "Monterey County") represented by its Chairperson, and the Board of Directors for Santa Cruz County Flood Control and Water Conservation District (hereinafter "Santa Cruz County") represented by its Chairperson (Monterey County and Santa Cruz County when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, Federal General Investigations funds for Fiscal Year 1993, included funds for the Government to initiate design of the Pajaro River (hereinafter the "*Project*" as defined in Article I.A. of this Agreement) at Watsonville, California;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into an agreement (hereinafter the "Agreement") for the provision of design for the *Project*;

WHEREAS, construction or implementation of the *Project* is authorized by Section 203 of the Flood Control Act of 1966, Public Law 89-789;

WHEREAS, Section 105(c) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215), provides that the costs of design of a water resources project shall be shared in the same percentage as the purposes of such project;

WHEREAS, the Government and the Non-Federal Sponsors agree that, during the *period of design*, the Non-Federal Sponsors shall contribute a lump sum of \$600,000 of *total design costs* and that, if a Project Cooperation Agreement for construction of the *Project* is executed between the Government and a non-Federal interest, such non-Federal interest shall contribute any remaining portion of the non-Federal share of the costs of design in accordance with the provisions of such Project Cooperation Agreement;

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

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsors through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsors, and facilitate the successful design and implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the flood damage reduction project on the Pajaro River, California, as authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 491, 89th Congress, 2d Session, 1966.

B. The term "*total design costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to design of the *Project*, including the General Reevaluation Report/Environmental Impact Statement, the detailed design report and plans and specifications. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government's supervision and administration costs; the Non-Federal Sponsors' and the Government's costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsors' and the Government's costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement. The term does not include any costs of additional work under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; the Non-Federal Sponsors' costs of negotiating this Agreement; or any costs of negotiating a project cooperation agreement for the *Project* or separable element thereof.

C. The term "*period of design*" shall mean the time from the effective date of this Agreement to the date that a Project Cooperation Agreement for construction of the *Project*, or a separable element thereof, is executed between the Government and a non-Federal interest or the date that this Agreement is terminated in accordance with Article X of this Agreement, whichever is earlier.

D. The term “*financial obligations for design*” shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total design costs*.

E. The term “*betterment*” shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

F. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsors, expeditiously shall design the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. To the extent possible, the Government shall design the *Project* in accordance with the Project Management Plan for the *Project* developed and updated as required by the Government after consultation with the Non-Federal Sponsors.

2. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts or commencement of design using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer, San Francisco District (hereinafter the “District Engineer”) furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsors.

4. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all design products that are developed by contract or by Government personnel during the *period of design*. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the final approval of all design products shall be exclusively within the control of the Government.

5. As of the effective date of this Agreement, approximately \$8,125,000 of Federal funds for design have been made available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. The Non-Federal Sponsors shall contribute up to 25 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsors shall provide a lump sum of \$600,000, and may provide additional funds, in accordance with the provisions of Article IV.B. of this Agreement.

2. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsors any contributions in excess of 25 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 25 percent of *total design costs*: (a) the funds provided under paragraph B.1. of this Article; and (b) the value of the Non-Federal Sponsors' contributions under Article III and Article VII of this Agreement.

C. Upon conclusion of the *period of design*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsors.

D. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

E. The Non-Federal Sponsors may request the Government to perform or provide, on behalf of the Non-Federal Sponsors, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article IV.D. of this Agreement.

1. Inclusion of *betterments* in the design of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of designing the features of the *Project* that include *betterments* between *total design costs* and the costs of the additional work.

2. Preparation of a floodplain management plan, required by Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), in connection with design of the flood or hurricane damage reduction features of the *Project*.

F. If the Government and the non-Federal interests enter into a Project Cooperation Agreement for construction of the *Project*, or a separable element thereof, the Government, in accordance with the provisions of this paragraph, shall include the amount of *total design costs* in total project costs for the *Project*, or separable element thereof. Further, the Government, in accordance with the provisions of this paragraph, shall afford credit toward the non-Federal interests' share of total project costs for the *Project*, or separable element thereof, for the Non-Federal Sponsors' contributions toward *total design costs* under this Agreement.

1. If the Government and the non-Federal interests enter into a Project Cooperation Agreement for construction of the entire *Project*, the Government shall include the amount of *total design costs* in total project costs for the *Project*. Further, the Government shall afford credit toward the non-Federal interests' share of total project costs for the Non-Federal Sponsors' contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government.

2. If the Government and the non-Federal interests enter into a Project Cooperation Agreement for construction of a separable element of the *Project*, the Government shall determine the portion of *total design costs* that are allocable to such separable element and include such amount in total project costs for such separable element. Further, the Government shall determine the amount of the Non-Federal Sponsors' contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government, that are allocable or attributable to such separable element and shall afford credit for such amount toward the non-Federal interests' share of total project costs of such separable element.

3. If the Government and the non-Federal interests do not enter into a Project Cooperation Agreement for construction of the *Project* or a separable element thereof, the Government shall not be obligated to refund or reimburse the Non-Federal Sponsors, in whole or in part, for the Non-Federal Sponsors' lump sum contribution of *total design costs*. Further, refund or reimbursement by the Government for any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement is subject to the availability of funds.

4. Notwithstanding any other provision of Article II.F. of this Agreement, any amount credited for the value of the Non-Federal Sponsors' contributions toward *total design costs* provided in accordance with Articles III and VII of this Agreement shall not be applied

toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(a)(1)(A)).

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving the Non-Federal Sponsors of any future obligation under the terms of any Project Cooperation Agreement.

ARTICLE III - DESIGN COORDINATION TEAM

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

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

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; scheduling of reports and work products; plans and specifications; real property and relocation requirements for construction of the *Project*; design contract awards and modifications; design contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

D. The Design Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design of the *Project*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations.

E. The Non-Federal Sponsors' costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, and the contributions provided by the parties.

1. As of the effective date of this Agreement, *total design costs* are projected to be \$13,260,000; the Non-Federal Sponsors' contribution of funds required by Article II.B.1. of this Agreement is projected to be \$600,000; of which Monterey County is providing \$200,000 and Santa Cruz is providing \$400,000. The Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs are required by Article II.E. of this Agreement are projected to be \$0.00. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

2. By September 2007 and by each quarterly anniversary thereof until the conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total design costs*; the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. of this Agreement and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.E. of this Agreement.

B. The Non-Federal Sponsors shall provide the contribution of funds pursuant to Article II.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not later than 30 calendar days after the effective date of this Agreement, the Non-Federal Sponsors shall provide to the Government the sum specified in Article II.B.1. of this Agreement by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government. Pursuant to Article II.B.1 of this Agreement, the Non-Federal Sponsors may provide additional funds by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the *financial obligations for design* as *financial obligations for design* are incurred.

C. Upon conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting.

1. The interim or final accounting, as applicable, shall determine *total design costs*. In addition, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

2. Should the interim or final accounting, show that the total contributions provided by the Non-Federal Sponsors for *total design costs* exceed 25 percent of *total design costs*, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsors are due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. If such appropriations are not received or, if the Non-Federal Sponsors requests that the Government not refund or reimburse the excess amount to the Non-Federal Sponsors, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Cooperation Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

D. The Non-Federal Sponsors shall provide the contribution of funds required by Article II.E. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsors to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the Government's financial

obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsors must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsors with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsors' contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsors for such additional work, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsors for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsors is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund. If such appropriations are not received or, if the Non-Federal Sponsors request that the Government not refund the excess amount to the Non-Federal Sponsors, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Cooperation Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

ARTICLE V – DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI – HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from design of the *Project* and design of any additional work pursuant to Article II.E. of this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsors shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsors shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsors shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act

Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

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

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of design of the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsors in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the

Government notifies the Non-Federal Sponsors in writing that sufficient Federal funds are available to meet the Federal share of *total design costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsors elect to terminate this Agreement.

C. In the event the Government determines that modifications to the *Project* are required and that additional authorization by Congress will be required before the Government may construct such modifications, the Government shall notify the Non-Federal Sponsors in writing of such determinations and shall terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.B.1. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsors:
Chairperson
Monterey County Board of Supervisors
1200 Aguajito Road, Suite 001
Monterey, CA 93940

and

Chairperson
Santa Cruz County Flood Control and Water Conservation District
701 Ocean Street, Room 500
Santa Cruz, CA 95060

If to the Government:
San Francisco District Engineer
1455 Market Street
San Francisco, CA 94103

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

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

ARTICLE XII - CONFIDENTIALITY

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

ARTICLE XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

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

DEPARTMENT OF THE ARMY

BY: Craig W. Kiley
LTC Craig W. Kiley
District Engineer

DATE: 11/26/07

MONTEREY COUNTY BOARD OF SUPERVISORS

BY: David Potter
David Potter
Chairperson

DATE: 10/20/07

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

BY: Jan Beutz
Jan Beutz
Chairperson

DATE: 10/4/07



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: WRAG 15-009

March 24, 2015

Introduced: 3/18/2015

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

Consider receiving a report on a comprehensive approach to Salinas Valley Groundwater Basin sustainability.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Supervisors: Receive a report on a comprehensive approach to Salinas Valley Groundwater Basin sustainability.

SUMMARY:

On January 1, 2015, the Governor signed into effect the "Sustainable Groundwater Management Act" (SGMA). SGMA provides a new paradigm for groundwater management in California. Using the SGMA as a catalyst, projects the Agency has been working on can be placed under a "sustainability umbrella", allowing the opportunity to show how these projects can work in concert to provide sustainability to the Salinas Valley Groundwater Basin (Basin).

On February 10, 2015, the County Board of Supervisors (BOS) provided direction to initiate a number of tasks as part of an Action Plan as recommended by the Ad Hoc Committee. This report will provide the status of directed actions.

DISCUSSION:

On February 10, 2015, the BOS directed Agency staff to embark on a number of tasks that would facilitate Agency/County compliance with the SGMA. The approved motion is attached to this report for reference. Below is a status report on specific items called out in the motion:

- Item a: Completed; report was provided at that meeting;
- Item b: Work has begun on the "Comprehensive Approach document" and a Working DRAFT is attached to this report;
- Item c: As the development of the Comprehensive Approach document nears completion, the information requested in this task will be developed and/or refined as part of a final version of the document;
- Item d: As the Agency moves through this process, the public and both (all three) Boards will be involved. Currently, it is thought that consultants will be needed for the following efforts:
 - Facilitation regarding the SGMA Groundwater Sustainability Agency (GSA) formation,
 - Subsequent Environmental Impact Report (EIR) / Environmental Impact Statement (EIS) work, and
 - Additional facilitation surrounding the development of the Salinas River Management Program;

- Item e: Staff is reporting back with a status at this meeting; and
- Item f: Staff is working with a Steering Committee to select a facilitator to begin the GSA formation process.

The Comprehensive Approach being proposed utilizes provision of additional resources to gain sustainability. The Agency is proposing sustainability be achieved with “Physical Solutions, not Prescribed Restrictions”, meaning that the Salinas Valley Groundwater Basin sustainability can be achieved by providing additional water through capital projects, versus looking at reductions or cutbacks to current pumping practices. It is about maintaining and improving the sustainability of all the economies in the Salinas Valley and Monterey County.

OTHER AGENCY INVOLVEMENT:

The Ad Hoc Committee has been involved in moving this process forward. The County, the Agency, the City of Salinas and three representatives from the Agricultural Community will be meeting to select a facilitator for the facilitated process to follow. As this establishment of a Groundwater Sustainability Agency process progresses, additional entities will be involved.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

FINANCING:

The financial impact from implementing this comprehensive approach is unknown at this time. There are a number of factors that will need to be evaluated before a final cost is developed.

Prepared by: David E. Chardavoynne
for Robert Johnson, Acting Assistant General Manager, (831) 755-4760

Approved by: David E. Chardavoynne
David E. Chardavoynne, General Manager, (831) 755-4760

Attachments:

- MCWRA BOS Board Order WRAG 15-001
- Comprehensive Salinas Valley Basin Sustainability Approach document



**Monterey County
Board of Supervisors of the
Monterey County Water Resources Agency**

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Director Potter, seconded by Director Parker and carried by those members present, the Board of Directors of the Monterey County Water Resources Agency hereby:

- a. Received a report and approving Action Plan as recommended by your Ad Hoc Committee for next steps on the Water Resources Agency's Strategic Plan including: the Interlake Tunnel Project; Sustainable Groundwater Management Act; Water Rights Permit 11043; Salinas River maintenance; drainage channel options; other water supply projects; and, other flood control projects;
- b. Directed Monterey County Water Resources Agency staff, with the assistance of county staff, to begin the preparation of a comprehensive approach to conditions in the Salinas's Valley Groundwater Basin. The approach should integrate the agencies groundwater management strategy to account for capital projects; groundwater monitoring protocols; permitting; public outreach and engagement and a sustainable financing strategy to implement the whole program. The approach should include the Interlake Tunnel Project, projects utilizing Water Rights Permit 11043; river channel maintenance; implementation of the Groundwater Sustainability Act and California Statewide Groundwater Elevation Monitoring (CASGEM) Program compliance; expansion of Castroville Seawater Intrusion Program (CSIP); and the increased use of recycled water from the reclamation ditch, Blanco Drain; and industrial wash water;
- c. Directed staff to prepare a preliminary outline to include the components of a comprehensive approach; cost estimates, funding sources and options;
- d. Directed staff to seek public input and process the preliminary outline expeditiously through the Monterey County Water Resources Board of Directors and return to the Board of Supervisors for a report and further action along with any recommendations for the retention of outside consultant expertise as soon as feasible;
- e. Directed staff to report back with a status report no later than the end of March of 2015; and
- f. Directed the Monterey County Water Resources Agency and County to work cooperatively with the valley cities and other interested parties to expeditiously work towards agreement on the formation and governance for a Groundwater Sustainability Agency for the Salinas Basin.

PASSED AND ADOPTED on this 10th day of February 2015, by the following vote, to wit:

AYES: Directors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on February 10, 2015.

Dated: February 12, 2015
File ID: WRAG 15-001

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach – WORKING DRAFT



Comprehensive Salinas Valley Groundwater Basin Sustainability Approach

Component Information Summary

Introduction (needs much more work at this time):

This document presents a comprehensive approach to sustainability for the groundwater basins in the Salinas Valley. The approach is one of adding water supply through physical solutions, as compared to prescribed restrictions on pumping.

Sustainability of water supplies in Monterey County is the key to sustainability of the environment and the economies of the County.

These physical solutions, or components, when implemented, can work together to provide a sustainable water future for the Salinas Valley.

What follows are component descriptions, with:

- The component title,
- A short description about the component,
- Component benefits,
- Requirements (permitting and such),
- Challenges,
- Options, and
- a summary table with information regarding:
 - Estimated Time frame
 - Water made available (acre-feet / year)
 - Estimated Budget
 - Possible Financing Sources
 - Current Status

There is a table near the end of the document that incorporates all the summary tables for each component.

Also, there is a timeline that shows how the components fit together around the Sustainable Groundwater Management Act Implementation timeline.

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach

Component Information Summary

Title: Interlake Connection and Regional Water Conservation Project

Description: Also known as the Interlake Tunnel Project, this project has been a top regional priority originally identified in a July 1991 Boyle Engineering report entitled *Monterey County Water Capital Facilities Plan*. In addition to increasing water quantity for drought protection in the region, the Project will provide additional flood control benefits.

The project consists of an 12,000-foot long, 10-foot diameter tunnel with a location in Monterey and San Luis Obispo counties connecting the Nacimiento and San Antonio reservoirs located in the Salinas Watershed HUC 1806005, plus spillway modifications to add 60,000 acre-feet of storage in the San Antonio Reservoir.

The current multi-year drought has resulted in limited flow in the Salinas River which has caused a sense of urgency around the Project and the fact that it should be constructed as soon as feasibly possible. Construction of this project enhances benefits to be gained from Permit 11043 utilization and construction of Jarrett Dam.

Benefits: Increased groundwater sustainability
60% reduction in number of spills
52% reduction in average flood volume

Requirements: Engineer's report for Proposition 218 process
Environmental clearance
DSOD approval of spillway modifications
Change in diversion point for water rights
Negotiation of a Project Labor Agreement

Challenges: Obtaining grant funds
Prohibition of export of White Bass from Lake Nacimiento
DSOD approval of spillway modifications
Easement acquisition
Ensuring construction during period of low lake levels

Options: construct tunnel only (if spillway modifications are not approved by DSOD)

Summary Table:

Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
2014 - 2018	21,000	\$63M	Grants – (\$12.5M or greater) Proposition 218	Conceptual design complete Design and Environmental RFPs prepared

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach Component Information Summary

Title: **Source Water Development and Water Recycling Project**

Description: Parties will work together jointly to develop multiple source waters to enhance reliability and expand CSIP as well as create a supply of water for the Monterey Peninsula's Groundwater Replenishment Project. Phase I will deliver 5,292 acre-feet per year to the Growers and 4,320 acre-feet per year to the Peninsula by 2017 to allow for a reduced-size desalination plant.

Source waters include agricultural wash water from Salinas' industrial ponds, Salinas' stormwater, Reclamation Ditch, Tembladero Slough, Blanco Drain and Monterey stormwater.

Staffs have committed to work on Phase II by 2025 for CSIP activities only, providing an additional 3,754 acre-feet.

Benefits: Increased groundwater sustainability
Size and cost reduction in required desalination plant
Increased reliability of source water
Low cost solution to stormwater discharge requirements

Requirements: Agreements between Project Partners (City of Salinas, MCWD, MCWRA, MPWMD, MRWPCA)
Rate Study and financing options
Water rights

Challenges: Cost share between parties
Prioritization of water use
Timing of infrastructure improvements
Public support of increased rates to finance projects
Resolving Blanco Drain water quality issues

Options: Phase projects by water source and timing of need
Only treat/produce water in years of need

Summary Table:

Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
2016 - 2025	8,900 short-term 21,000 long-term	\$17M short-term Unknown long-term	Project Partners Grants Proposition 218	Planning Design

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach

Component Information Summary

Title: Salinas River Stream Maintenance Program

Description: The Agency manages the program which allows individual property owners to remove vegetation and sediment from portions of the Salinas River Channel, since after the devastating 1995 floods. When the USACE RGP five-year permit expired in 2008, regulators required a new approach to the program.

A new multi-objective approach was developed which joins participants together in a cohesive fashion, forming River Management Units (RMUs), to manage stream maintenance efforts for specific stretches of the river. This program is thought to last about five years, with the Salinas River Management Program (following component) building on the success of the RMUs.

It is estimated that there is approximately 40,000 to 60,000 acre-feet of water annually evapotranspired from non-native invasive vegetation in the Salinas River. This is water that could be utilized for aquifer recharge into the groundwater basin, thus helping halt SWI. Removing overgrown vegetation from the river channel also mitigates flooding damage potential. Maintenance activities occurred from 1997-2008 and in 2014.

Benefits: Habitat Restoration through diversification of species and removal of non-native invasive plant species.
Increased complexity of river channel
Flood Protection

Requirements: Activity development for remaining RMUs (Phase 2)
Permit acquisition for Phase 2

Challenges: Voluntary Program
Work to be performed on Private Property
Cost of work
Desire to have a larger flood benefit
Limited available biological data

Options: Increase partner funding and involvement

Summary Table:

Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
2014 - 2022	Varied – depends on amount of vegetation removed and regrowth	\$1.1M / year	MCWRA Project Partners Landowners Grants CCC	Planning Implementation

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach Component Information Summary

Title: Salinas River Management Program

Description: The Salinas River Management Program is planned to change the paradigm from Stream Maintenance (above component) to River Management. The program is designed to provide a holistic approach to river management for the Salinas River, involving a number of stakeholders and interest groups to come up with a plan and program that is built upon consensus. This program is thought to take roughly seven to ten years to develop and implement.

Some of the next actions that need to be taken include: Develop strategy to implement Program, including the updating of the Lagoon Management and Enhancement Plan; develop a funding strategy for the Program; develop roles and responsibilities for Agency and County Staffs, as well as local, state and federal elected officials, including responsible resource agencies; consider utilizing professional facilitation to develop the Program; and, keep the legislative options open.

Benefits: Holistic approach to Salinas River Management

Requirements: TBD

Challenges: Public Support
Private Property
Sustainable Funding

Options: TBD

Summary Table:

Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
2021 - ??	Unknown	Unknown	To be determined	Not started

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach Component Information Summary

Title: Water Right Permit #11043

Description: The water rights of 135,000 acre-feet on an intermittent basis is a critical piece of the Agency's solution to seawater intrusion and basin sustainability. Pursuant to a July 2013 Settlement Agreement between the Agency and the State Water Resources Control Board, the Agency filed a Notice of Preparation (NOP) of an Environmental Impact Report for a project to utilize this water. The NOP did not describe a specific project, though it did describe elements of a project that would need to be analyzed.

As part of the comments on the NOP, alternate projects were proposed to utilize the Water Rights Permit #11043 water. The variability of these alternative projects ranges from projects with similar configurations to projects proposed in the 1960s, to a project that proposes a pipeline from the reservoirs to the north end of the Salinas Valley. The EIR process will evaluate alternative projects and determine the preferred project for utilization of this water.

Some of the next actions that need to be taken include: obtain an extension on the current time line to develop alternative project options; prepare an Environmental Impact Report; and, develop scope of work for consultant to determine answers to question about amount and timing of available water.

Benefits: Senior Water Right
Key component to groundwater basin sustainability

Requirements: Develop Project(s) to analyze in EIR
Develop sustainable funding strategy
Develop acceptable timeframe for project completion

Challenges: How water will be utilized
Public expectations
Limited Agency resources

Options: Develop resources to focus on completion of the project
Utilize SGMA to gain support and resources
Let go of water rights permit

Summary Table:

Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
2018 - 2030	Up to 135,000	Unknown	Grants Proposition 218 Water Sales	On hiatus: Interlake Tunnel and SGMA are higher priority

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach Component Information Summary

Title: Jerrett Dam Site

Description: This dam site is on the Nacimiento River, upstream of Nacimiento Reservoir, on Fort Hunter Liggett Military Reservation property. The dam could be constructed to impound 145,000 acre-feet. This additional dam and reservoir would be a valuable addition to the reservoirs the Agency currently manages, and brings additional value to the Interlake Tunnel Project. With the Jerrett Dam and Interlake Tunnel added to the Nacimiento and San Antonio reservoirs, the resulting "system" would provide numerous additional reservoir / release management scenarios, and lead to improve water management in the Salinas Valley.

Benefits: Additional Water Supply
Increases Water Supply management options

Requirements: TBD

Challenges: Cost
Funding
Possible Archeological Sites

Options: TBD

Summary Table:

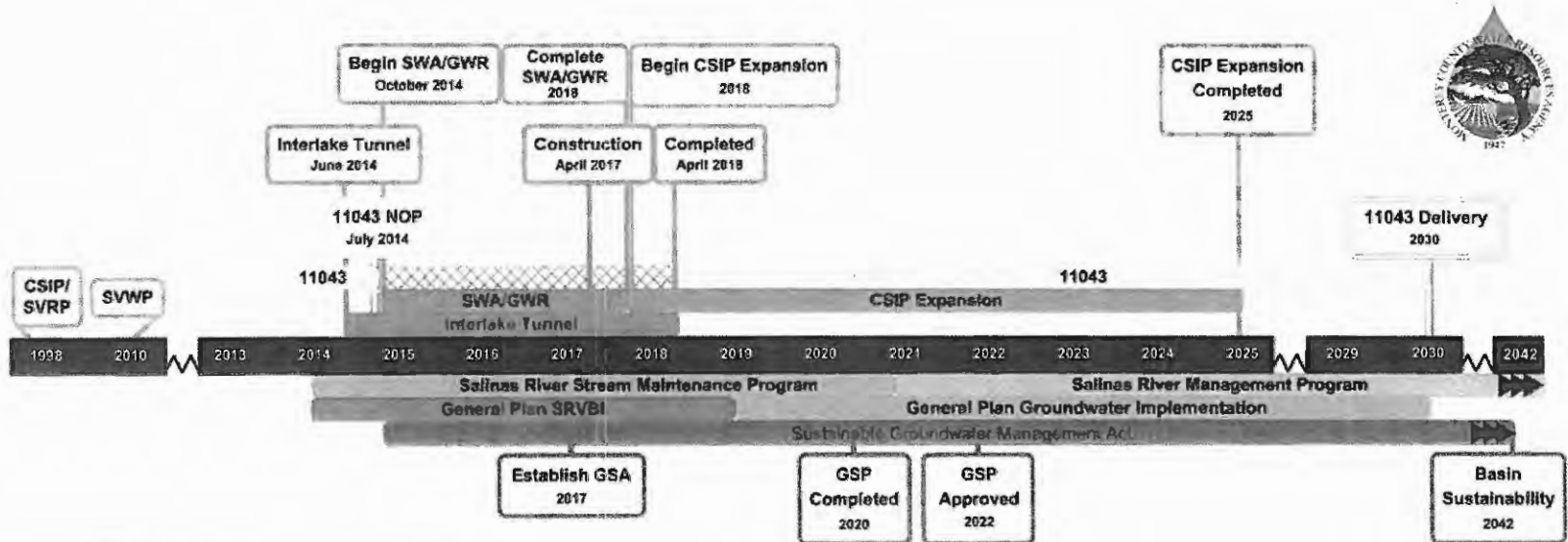
Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
TBD	Unknown	TBD	TBD	To be evaluated

Comprehensive Salinas Valley Groundwater Basin Sustainability Approach
Component Information Summary

Summary of Component Information

Component Name	Expected Timeframe	Water made Available (ac-ft/yr)	Estimated Budget	Financing Sources	Current Status
Interlake Connection	2014 - 2018	21,000	\$63M	Grants – (\$12.5M or greater) Proposition 218	Conceptual design complete Design and Environmental RFPs prepared
Source Water Development	2016 - 2025	8,990 short-term 21,000 long-term	\$17M short-term Unknown long-term	Project Partners Grants Proposition 218	Planning Design
SRSMP	2014 - 2022	Varied – depends on amount of vegetation removed and regrowth	\$1.1M / year	MCWRA Project Partners Landowners Grants CCC	Planning Implementation
SRMP	2021 - ??	Unknown	Unknown	To be determined	Not started
WR Permit# 11043	2018 - 2030	Up to 135,000	Unknown	Grants Proposition 218 Water Sales	On hiatus: Interlake Tunnel and SGMA are higher priority
Jerrett Dam	TBD	Unknown	Unknown	Unknown	To be evaluated

Comprehensive Salinas Valley Basin Sustainability Approach



- (CSIP) Castroville Seawater Intrusion Project/
(SVRP) Salinas Valley Reclamation Project
(SVWP) Salinas Valley Water Project
- (SWA/GWR) Source Water Agreement/Ground Water Replenishment
- General Plan (SRVBI) Salinas River Valley Basin Investigation
- General Plan Groundwater Implementation
(address seawater intrusion and falling groundwater levels by 2030)



Staff Use Only
3/5/2015