CLOSED SESSION AGENDA
WEST SACRAMENTO AREA FLOOD CONTROL AGENCY
REGULAR MEETING OF A JOINT POWERS AUTHORITY OF THE CITY OF WEST SACRAMENTO,
RECLAMATION DISTRICT 537, AND RECLAMATION 900
AUGUST 20, 2020

Tom Ramos, Chair (RD 537)
Beverly Sandeen, Director/Vice-Chair (City)  Chris Ledesma, Director (RD 900)
Quirina Orozco, Alternate Director (City)

Greg Fabun, General Manager/Secretary
Ralph Nevis, Agency Attorney

8:00 AM  Call to Order

AGENCY ATTORNEY

1. Conference with Legal Counsel – Pending Litigation - GC §54956.9(c):
   Shimmick Construction v. West Sacramento Area Flood Control Agency, Yolo County Superior
   Court Case No. CVCV-2020-211.

2. Conference with Legal Counsel – Potential Litigation – GC § 54956.9 (a), (d)(2), (e)(2):
   Notices of Potential Claim received from DeSilva Gates Construction LP, pursuant to a
   construction contract related to the Southport Levee Improvement Project borrow restoration.
   DeSilva Gates provided notices of potential claims arising from dispute over the calculation of
   payment for work under the subject contract.

3. Conference with Real Property Negotiator (Government Code §54956.8).
   Negotiating Parties: Mark Zollo (WSAFCA)
   APN 010-373-017, Heirs or Devises of the following parties now deceased: Kelsey, Donley, and Ober.
   APN 010-373-018, Heirs or Devises of Robert A. Waring, deceased, and Ray C. Waring, deceased.

The meeting will be held over a secured teleconference phone call.

I, Greg Fabun, General Manager/Secretary, declare under penalty of perjury that the foregoing
agenda for the August 20, 2020 closed session meeting of the West Sacramento Area Flood
Control Agency was posted August 14, 2020 in the office of the City Clerk of the City of West
Sacramento, 1110 West Capitol Avenue, West Sacramento, CA and was available for public
review.

Greg Fabun, General Manager/Secretary

All public materials related to an item on this agenda submitted to the Agency after distribution of the
agenda packet are available for public inspection on the City’s website at:
www.cityofwestsacramento.org. Any public, non-privileged, document provided at the meeting by
staff will also be available to the public. Any document provided at the meeting by the public will be
available the next business day following the meeting.
AGENDA
WEST SACRAMENTO AREA FLOOD CONTROL AGENCY
REGULAR MEETING OF A JOINT POWERS AUTHORITY OF THE CITY OF WEST SACRAMENTO,
RECLAMATION DISTRICT 900, AND RECLAMATION DISTRICT 537
AUGUST 20, 2020

Tom Ramos, Chair (RD 537)
Beverly Sandeen, Director/Vice-Chair (City)  Chris Ledesma, Director (RD 900)
Quirina Orozco, Alternate Director (City)
Greg Fabun, General Manager/Secretary
Ralph Nevis, Agency Attorney

9:00 AM  CALL TO ORDER

Pursuant to the Governor’s Executive Order N-29-20, members of the West Sacramento Area Flood Control Agency and staff will participate in this meeting via a teleconference. To reduce the spread of COVID-19, members of the public are asked to watch the meeting livestream at https://www.cityofwestsacramento.org/government/meetings-agendas/west-sacramento-area-flood-control-agency and to submit comments in writing by 8:00 am on August 20, 2020.

To submit a comment in writing, please email nhungt@cityofwestsacramento.org and write “Public Comment” in the subject line. In the body of the email, include the item number and/or title of the item as well as your comments. All comments received by 8:00 am will be provided to the West Sacramento Area Flood Control Agency Board and posted on the website. The comments submitted shall become part of the record of the meeting.

If you need special assistance to participate in this meeting, please contact the Community Development Department at 916-617-4645. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting. Assisted listening devices are available at this meeting.

GENERAL ADMINISTRATION FUNCTION – PART I

1A.  PRESENTATIONS BY THE PUBLIC ON MATTERS NOT ON THE AGENDA WITHIN THE JURISDICTION OF THE AGENCY. THE AGENCY IS PROHIBITED BY LAW FROM DISCUSSING ISSUES NOT ON THE AGENDA BROUGHT TO THEM AT THIS TIME.

1B.  REPORT OUT ON CLOSED SESSION

1C.  MONTHLY/YTD REVENUE AND EXPENSES

CONSENT AGENDA

2.  CONSIDERATION OF RESOLUTION 20-08-01 ENTERING INTO AN OPERATIONS, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R) AGREEMENT FOR THE SOUTHPORT LEVEE IMPROVEMENT PROJECT WITH RECLAMATION DISTRICT 900 (RD 900) AND THE STATE OF CALIFORNIA ACTING THROUGH THE CENTRAL VALLEY FLOOD PROTECTION BOARD (CVFPB)

Comment: This item seeks Board adoption of Resolution 20-08-01, authorizing the General Manager to enter into the OMRR&R Agreement with RD 900 and the CVFPB.

3.  CONSIDERATION OF APPROVAL OF THE JUNE 18, 2020 MEETING MINUTES

GENERAL ADMINISTRATION FUNCTION – PART II

4.  A.  Borrow Site Restoration Update
    B.  WSAFCA Project Updates
    C.  Director Comments
    D.  Adjourn
I, Greg Fabun, General Manager/Secretary of the West Sacramento Area Flood Control Agency, declare under penalty of perjury that the foregoing agenda for the August 20, 2020 meeting of the West Sacramento Area Flood Control Agency was posted on August 14, 2020 in the office of the City Clerk of the City of West Sacramento, 1110 West Capitol Avenue, West Sacramento, CA, and was available for public review.

Greg Fabun, General Manager/Secretary  
West Sacramento Area Flood Control Agency

<p>| All public materials related to an item on this agenda submitted to the Agency after distribution of the agenda packet are available for public inspection on the City’s website at: <a href="http://www.cityofwestsacramento.org">www.cityofwestsacramento.org</a>. Any document provided at the meeting by staff will also be available to the public. Any document provided at the meeting by the public will be available the next business day following the meeting. |</p>
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<tr>
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<th>WSAFCA JPA</th>
<th>WSAFCA Cap Projects</th>
<th>STATE Advance Funding</th>
<th>Combined</th>
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<td>871-0000</td>
<td>257-9917</td>
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<td>12,708,132 c=a-b</td>
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<td>2. CASH RECEIPTS</td>
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<td>(16,195)</td>
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<td>4810 Reimbursements</td>
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<td>4825 Contributions</td>
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<td>4910 Transfers In</td>
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<td>(1,900)</td>
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<td>(a) Operations &amp; Maintenance</td>
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<td>5256 Memberships/Dues</td>
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<td>5258 Training/Travel/Meals</td>
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<td>5259 Special Department Expenses</td>
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<td>5260 Legal Expenses</td>
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<td>5271 Insurance Liability</td>
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<td>5273 Fidelity</td>
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<td>(b) Non-Operating</td>
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<td>5310 Contributions to Other Agencies</td>
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<td>5330 Taxes/Assessments</td>
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<td>Subtotal (Sa)</td>
<td>751,533</td>
<td>(116,393)</td>
<td>117,747</td>
<td>4,932</td>
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<td>(c) Transfers Out</td>
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<td>2011 Debt Service</td>
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<td>5950 Transfer Out</td>
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<td>Subtotal (Se)</td>
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<td><strong>1. 871 Fund Balance</strong></td>
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<tr>
<td>(Beginning of Period, incl restricted cash)</td>
<td>(1,325,680)</td>
<td>(1,325,680)</td>
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<td><strong>2. CASH RECEIPTS</strong></td>
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<td>a) 4100 Interest-Other</td>
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<td>b) 4011 Investment Pool Earnings</td>
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<td>d) 4810 Reimbursements</td>
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<td>e) 4899 Other Revenue</td>
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<td>f) 4990 Transfers In</td>
<td>3,132,827</td>
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<td><strong>3. TOTAL CASH RECEIPTS</strong></td>
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<tr>
<td>[ \sum 2a \text{ thru } 2d ]</td>
<td>12,441,328</td>
<td>(1,094)</td>
<td>265</td>
<td>2,057,823</td>
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<td><strong>4. TOTAL CASH AVAILABLE</strong></td>
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<td>[ 1 + 3 ]</td>
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<td>( \text{d) CIP (871-9915)} )</td>
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<td>GRR, WD 40002</td>
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<td>( \text{871-9915)} )</td>
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<td>(4 - 5) End of Period</td>
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### Project Expenditure by Vendor, June 2020

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<th>General JPA</th>
<th>WSLIP</th>
<th>SLIP</th>
<th>Fed Project</th>
<th>Total by Vendor</th>
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### Project Expenditure by Vendor, YTD

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OBJECTIVE
The objective of this report is to present sufficient information to the West Sacramento Area Flood Control Agency (WSAFCA) Board of Directors (Board) to adopt Resolution 20-08-01 to enter into a three-party Operations, Maintenance, Repair, Replacement, and Rehabilitation Agreement (Agreement) with Reclamation District 900 (RD 900) and the State of California, acting through the Central Valley Flood Protection Board (CVFPB).

RECOMMENDED ACTION
Staff respectfully recommends that the Board:
1) Adopt Resolution 20-08-01 to enter into the Agreement; and
2) Authorize the General Manager to execute the Agreement by original signature or by electronic signature under the terms of the Uniform Electronic Transactions Act (Civ. Code, § 1633.1, et seq., “UETA”), in substantially the form attached, and to accept the agreement bearing an original signature or electronic signature in conformance with the UETA from authorized representatives of RD 900 and the CVFPB.

BACKGROUND
WSAFCA has received significant funding through its partnership with the State of California Department of Water Resources (DWR) under the Early Implementation and Urban Flood Risk Reduction Programs. The funding has allowed WSAFCA to quickly design and construct levee improvements in both the North Area (I Street, Rivers, and CHP), the Southport Levee Improvement Project (SLIP), and to initiate design of the first segment of the Federal West Sacramento Project, the Yolo Bypass East Levee. Funding is provided by the State through a Construction Funding Agreement (CFA).

The CFA provides that the Funding Recipient shall be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of constructed improvements. The Funding Recipient and the Local Maintaining Agency (LMA) may agree that the LMA assumes responsibility for OMRR&R provided the Funding Recipient shall provide assurance to provide OMRR&R should the LMA fail to do so. Under the Agreement, the State acting through the CVFPB will oversee OMRR&R for the Southport Project as part of the State Plan of Flood Control. Paragraphs 1 and 2 of the attached Agreement describe the statutory and public investment context for the OMRR&R requirement.

ANALYSIS
For the purpose of the Agreement under consideration, WSAFCA is the Funding Recipient and RD 900 is the LMA. The Agreement pertains to the SLIP and will be amended to include previous and future projects as applicable. RD 900 has historically maintained the Southport levee and now maintains and is responsible for the recently constructed project. RD 900 agrees that it is the appropriate entity to assume responsibility for OMRR&R under the Agreement. WSAFCA shall assume the responsibility if for any reason RD 900 were to fail to perform under the OMRR&R. It is anticipated that the RD 900 Board will have considered and approved the Agreement at the August 19, 2020 RD 900 Board meeting.
Agreement requirements include: periodic reporting obligations, development and any update to the Standard Operations and Maintenance Manual for the SLIP, access for levee inspections, periodic review and updates to the Safety Plan, the management of hazardous substances on project lands under the Comprehensive Response, Compensation and Liability Act (CERCLA) and similar State statutes, the delegation or subcontracting of work, reimbursement for State work in the event of a failure to perform by the LMA, and dispute resolution.

The Agreement also includes provisions requiring WSAFCA to seek credit from any federal funding agreements for expenditures under the CFA should that credit be available, provisions that the agreement may be superseded by one or more agreements with the Federal Government through the Army Corps of Engineers, and provisions to hold and save the Federal Government, State, and their representatives free and harmless from claims arising from OMRR&R of the SLIP.

The Agreement includes prior and future work under the West Sacramento Levee Improvement Program while excluding areas maintained by the State (Maintenance Area 4) and areas formerly maintained by Reclamation District 537.

Upon the effective date, the Agreement continues in force unless terminated or amended by the parties.

Alternatives
Staff recommends that the WSAFCA Board adopt Resolution 20-08-01 to enter into the OMRR&R Agreement with RD 900 and the CVFPB and to authorize the WSAFCA General Manager to execute the Agreement. The Board could defer approval into the future which is not recommended. The Agreement is required under the terms of the CFA and a deliverable for project close out. A deferral will directly impact project retention release. The Board could decline to approve Resolution 20-08-01, which is not recommended. As mentioned, approval of the Agreement is required by the terms of the CFA, to which the Agency has agreed.

Coordination and Review
This item was coordinated between Flood Division staff, WSAFCA legal counsel, and in consultation with RD 900 and CVFPB staff.

Budget/Cost Impact
Resolution 20-08-01 has no direct budget impact. Provisions in the 2007 Engineer’s Report established transfers of portions of the Flood Assessment to the LMAs for maintenance.

ATTACHMENTS
1) Resolution 20-08-01
2) OMRR&R Agreement
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST SACRAMENTO AREA FLOOD CONTROL AGENCY  
TO ENTER INTO AN OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION AGREEMENT WITH RECLAMATION DISTRICT 900 AND THE STATE OF CALIFORNIA ACTING THROUGH THE CENTRAL VALLEY FLOOD PROTECTION BOARD

WHEREAS, The Southport Levee Improvement Project (SLIP) is part of the West Sacramento Levee Improvement Program, which in turn is a part of the Sacramento Metro Area Flood Control Project that was authorized by Congress in Section 101(4) of the Water Resources Development Act of 1992, the Energy and Water Development Appropriations Act of 1999, and the Water Infrastructure Improvements for the Nation Act of 2016, and is a part of the Sacramento River Flood Control Project, which was authorized by Congress on March 1, 1917, and amended on May 16, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 16, 1960; and

WHEREAS, The voters of California approved Propositions 1E and 84 on November 7, 2006, making bond funds available for flood control work and other purposes; and

WHEREAS, The State acting through the Department of Water Resources (DWR) provides funding for these purposes through the Early Implementation and Urban Flood Risk Reduction Programs (Programs); and

WHEREAS, WSAFCA entered into funding agreements under the programs to design and construct the SLIP; and

WHEREAS, The funding agreements provide that WSAFCA, as the Funding Recipient, shall be responsible for operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the Southport Project; and

WHEREAS, WSAFCA may agree with the Local Maintaining Agency (LMA) that the LMA shall assume responsibility for OMRR&R of the SLIP provided that WSAFCA shall assume responsibility should the LMA fail to provide OMRR&R of the SLIP; and

WHEREAS, Reclamation District 900 (RD 900) is the LMA and has agreed to assume responsibility for OMRR&R of the SLIP; and

WHEREAS, The State of California acting through the Central Valley Flood Protection Board shall oversee OMRR&R of the SLIP and is party to the Operations, Maintenance, Repair, Replacement, and Rehabilitation Agreement (Agreement); and

WHEREAS, the terms and obligations of the Agreement have been reviewed by the parties.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the West Sacramento Area Flood Control Agency as follows:

1. The above recitals are true and correct.

2. The Operations, Maintenance, Repair, Replacement, and Rehabilitation Agreement with the Central Valley Flood Protection Board and Reclamation District 900 is hereby approved.

3. The WSAFCA General Manager is hereby authorized to execute the Agreement and take such other actions as may be necessary to carry out the purposes of the Agreement as set forth therein.
PASSED AND ADOPTED by the Board of Directors of the West Sacramento Area Flood Control Agency this 20th day of August 2020, by the following votes:

AYES:
NOES:
ABSTAIN:
ABSENT:

______________________________  
Tom Ramos, Chair

ATTEST:

_________________________________  
Greg Fabun, WSAFCA General Manager

APPROVED AS TO FORM:

_________________________________  
Ralph R. Nevis, WSAFCA Attorney

_________________________________  
Roberta Raper, WSAFCA Treasurer
OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
Reclamation District No. 900
AND
The West Sacramento Area Flood Control Agency
FOR
The Southport Levee Improvement Project

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board"), Reclamation District No. 900 ("Local Maintaining Agency"), and, for the limited purpose of Section I.A.3. and 4., hereof, the West Sacramento Area Flood Control Agency ("Funding Recipient") on this _______ day of __________, 2020 in view of the following circumstances:

1. The Southport Levee Improvement Project ("Southport Project") is part of the West Sacramento Levee Improvement Program, which in turn is a part of the Sacramento Metro Area Flood Control Project that was authorized by Congress in Section 101(4) of the Water Resources Development Act of 1992, the Energy and Water Development Appropriations Act of 1999 and the Water Infrastructure Improvements for the Nation Act of 2016, and is a part of the Sacramento River Flood Control Project, which was authorized by Congress on March 1, 1917, and amended on May 16, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 16, 1960. The Southport Project is being funded in part under the Early Implementation Program ("EIP") guidelines, with the balance of such Southport Project to be undertaken under the Department of Water Resources’ ("Department") Urban Flood Risk Reduction ("UFRR") guidelines.

2. State funding has become available for the EIP and UFRR Projects:
   • The voters of California approved Propositions 1E and 84 on November 7, 2006, making bond funds available for flood control work and other purposes.
   • The State, acting by and through the Department, has accepted applications for EIP funding and has solicited applications for UFRR funding for its State-Federal Flood Control System Modifications Program.
   • As a result, Funding Agreements were signed. The Funding Agreements are between the Department and the Funding Recipient for the Southport Project.
   • The Funding Agreements provide that the Funding Recipient shall be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the Southport Project. Under this OMRR&R Agreement the Board will oversee OMRR&R for the Southport Project for the State, as part of the State Plan of Flood Control.
   • Under the Funding Agreements the Funding Recipient may agree to assume the responsibility of the Local Maintaining Agency as set out in this OMRR&R Agreement or may agree with a Local Maintaining Agency that it shall assume responsibility for OMRR&R of the Southport Project, provided that the Funding Recipient shall assume responsibility for
3. It is not expected that the Federal Government will provide funding for the EIP and UFRR funded Projects at this time, but in anticipation that federal funds may become available eventually:

- The Funding Agreements require the Funding Recipient to seek credit for the expenditures made under the Funding Agreements from the Federal Government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.

- The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the USACE and the Board that gives satisfactory assurances to the Federal Government and the Board that the required local cooperation will be furnished in connection with the Southport Project.

4. The Local Maintaining Agency agrees that it already has responsibility for OMRR&R for existing portions of the project (as hereinafter defined and as depicted on the plat attached hereto as Figure 1) under California Water Code Section 12642 which states, and under which the State contends, that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the Federal Government free from damages.

5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Local Maintaining Agency provides the Board with the assurances specified in this OMRR&R Agreement that Local Maintaining Agency will be responsible for OMRR&R of the Project upon its completion; and will, as described below, hold and save the Federal Government, State, their representatives, officers, directors, and employees, including their attorneys, as well as their successors and assigns, free and harmless from any and all claims and damages arising from OMRR&R of the Southport Project, and Funding Recipient will, as described below, hold and save the Federal Government, State, their representatives, officers, directors, and employees, including their attorneys, as well as their successors and assigns, free and harmless from any and all claims and damages arising from construction of the Southport Project.

6. The Board and the Local Maintaining Agency have agreed that this OMRR&R Agreement will set forth not only their agreement with respect to OMRR&R for the Southport Project, but also for work funded under prior and future funding agreements related to The West Sacramento Levee Improvement Program, save and except for portions operated and maintained by State Maintenance Area 4, on land and rights-of-way that have been or will ultimately be transferred to the Sacramento and San Joaquin Drainage Districts, acting by and through the Board and for portions operated and maintained by Reclamation District No. 537, and all of the federally and State authorized flood facilities related to the project that are within the Local Maintaining Agency’s boundaries.
NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

“Board:” The State of California Central Valley Flood Protection Board or any successor thereto.

“USACE:” The United States Army Corps of Engineers.

“Department:” The State of California Department of Water Resources.

“Funding Agreements:” Agreements between the State of California Department of Water Resources and the West Sacramento Area Flood Control Agency for The West Sacramento Levee Improvement Program dated October 19, 2009, Agreement Number 4600008653 and June 23, 2011, Agreement Number 4600009394.

“Funding Recipient:” The West Sacramento Area Flood Control Agency, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreements.

“Federal Government:” Department of the Army represented by the Assistant Secretary of the Army (Civil Works).

“Local Maintaining Agency:” Reclamation District 900 or its successors or assigns, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is either the signatory to a Funding Agreement or has been designated by the Funding Recipient as the agency which will assume responsibility for OMRR&R for any Functional Portion of the Southport Project, and the Project.

“OMRR&R:”

Operation, maintenance, repair, replacement, and rehabilitation of the Project in accordance with Federal law, including without limitation, compliance with operations and maintenance requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, Federal guidance such as ER 1110-2-401 and other documents which confirm that repair, replacement, and rehabilitation does not include reconstruction of a project or project segment that has reached the end of its design service life or is deficient due to a design or construction defect, and applicable Operation and Maintenance Manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.

“OMRR&R Agreement:” This agreement between the Central Valley Flood Protection Board, West Sacramento Area Flood Control Agency, and Reclamation District No. 900, for OMRR&R of the Project.

“Overall Work Plan:” The plan described in Exhibit A-1 of the Funding Agreements, as amended.

“Post Construction Performance Reports:” Funding Recipient shall submit a summary of the operations for the Project. This report shall be prepared annually in compliance with Assembly Bill 156 (Stats. 2007, ch. 368) and comply with Section 9140 of the California Water Code.

“Project:” All of the federally and State authorized flood facilities as shown in Figure 1 to the extent to which they are within the Local Maintaining Agency’s boundaries.
“Project Site:” The location of the Southport Project.

“Southport Project:” The flood risk reduction project features of such Southport Project as described in the Overall Work Plan described in the Funding Agreement, as amended.

“Standard Operation and Maintenance Manual:” A document prepared by Local Maintaining Agency and submitted to the State for review, comment and approval that will govern the operation, maintenance, repair, replacement and rehabilitation of the Project. This manual will include all manuals related to the Project and facilities covered by this OMRR&R agreement, including those prepared by the USACE and/or Board for flood, ecosystem, habitat, mitigation or other purposes and any other such manuals.

“State:” The State of California, acting by and through the Board.


SECTION I: Obligations of the Local Maintaining Agency, and, in part, the Funding Recipient.

A. General Obligations. The Local Maintaining Agency, and, in part, as provided in Subsection 3 and 4, below, the Funding Recipient agree to the following:

1. To perform OMRR&R for the Project, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Local Maintaining Agency to perform OMRR&R for State Plan of Flood Control Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Local Maintaining Agency pursuant to this paragraph are described further in Section I-B below.

2. To defend, indemnify, hold and save the Federal Government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, including their attorneys as well as their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited to any claims or damages arising from the construction and performance of OMRR&R under this Agreement.

3. The Funding Recipient agrees to defend, indemnify, hold and save the Federal Government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, including their attorneys as well as their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited to any claims or damages arising from the construction and performance of OMRR&R under this Agreement.

4. The Funding Recipient agrees to cause OMRR&R to be performed on all mitigation features of the Project in accordance with environmental permits, environmental impact reports, and applicable regulations and directions.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Local Maintaining Agency hereby accepts responsibility for OMRR&R of the Project. The Local Maintaining Agency agrees that it will be responsible for OMRR&R of the Project as further explained in: (1) the Standard Operation and Maintenance Manual for
the Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual for the Project.

2. The Local Maintaining Agency agrees to cooperate in the Funding Recipient’s development of a Standard Operation and Maintenance Manual for the Project as required by Board permits issued to The Funding Recipient for The West Sacramento Levee Improvement Program. The Standard Operation and Maintenance Manual for the Southport Project may be a stand-alone document or an amendment to the Standard Operation and Maintenance Manual for the Project as directed by the Board. The Local Maintaining Agency acknowledges that changes to the Standard Operation and Maintenance Manual may be made by the State and the USACE before the document becomes final. The State may make reasonable changes but shall consult with Local Maintaining Agency prior to making such changes. Local Maintaining Agency shall be required to update the Standard Operation and Maintenance Manual as may be necessary or as required by the Board and shall make a copy available to the State within three (3) days after the State so requests. Local Maintaining Agency shall be responsible for OMRR&R in accordance with any revised version of the Standard Operation and Maintenance Manual for the Project or any Supplement to the Standard Operation and Maintenance Manual.

3. The Local Maintaining Agency hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Local Maintaining Agency is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Local Maintaining Agency to enter the land to fulfill its obligations under this OMRR&R Agreement.

4. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under California Water Code Section 12878 et seq. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of law, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Project or functional portion thereof to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a work plan and present it to the Local Maintaining Agency with instructions that if the Local Maintaining Agency does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency’s obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.
C. **Additional Obligations:**

1. The Local Maintaining Agency shall annually review and, if appropriate or requested by the State, update the safety plan for the Southport Project prepared pursuant to the relevant Funding Agreements or required by California Water Code section 9650. The Local Maintaining Agency agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the State emergency plan.

2. No later than September 30th of each year, the Local Maintaining Agency shall provide an annual Post Construction Performance Report to the Department. It is agreed that the report provided pursuant to Water Code section 9140 will serve that purpose.
   
   (a) If the Local Maintaining Agency is not the same as the Funding Recipient, the Local Maintaining Agency represents that it has made arrangements with the Funding Recipient to obtain any information needed from the Funding Recipient in order to prepare this report.
   
   (b) The Department in its sole determination may modify the reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

3. Upon request, the Funding Recipient will provide the State with copies of Project Completion Reports prepared pursuant to the Funding Agreement.
   
   (a) No later than September 30th of each year the Local Maintaining Agency shall certify that it has reviewed the Standard Operations and Maintenance Manual and that either: (1) no updates are needed to the Standard Operation and Maintenance Manual; or (2) the Standard Operation and Maintenance Manual has been updated.
   
   (b) The Board in its sole determination may modify the reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

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**SECTION II: Hazardous Substances**

The Local Maintaining Agency acknowledges that the State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code §§ 25310 et seq. or other statutes or regulations (collectively referred to as “state and federal Hazardous Substances Laws”) on lands necessary for Project construction and OMRR&R to the extent the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. The Local Maintaining Agency agrees:

A. That in the event that the Local Maintaining Agency discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Local Maintaining Agency shall promptly notify the State of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require Local Maintaining Agency to incur response costs in excess of $10,000.

B. That in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Local Maintaining Agency shall initiate and complete any and all necessary response and cleanup activity required
Agreement __________

under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Local Maintaining Agency. In the event that the Local Maintaining Agency fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, or to otherwise discharge the Local Maintaining Agency’s responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Local Maintaining Agency shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Local Maintaining Agency concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

C. That the Local Maintaining Agency shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.

D. That the Local Maintaining Agency shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.

E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Local Maintaining Agency shall indemnify and hold the State, its representatives, officers, directors, employees, including its attorneys, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, its representatives, officers, directors, employees, including its attorneys, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.

F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Local Maintaining Agency of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Local Maintaining Agency for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.
SECTION III: Authorization for Delegation or Subcontracting

The Local Maintaining Agency may delegate or subcontract its responsibilities under this OMRR&R Agreement. The Local Maintaining Agency shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Local Maintaining Agency; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

SECTION IV: Procedures for Reimbursing the State

To the extent the Local Maintaining Agency fails to fulfill its obligations under this Agreement, the State may perform such obligations and bill the Local Maintaining Agency accordingly. In such circumstances, the State shall provide an invoice to the Local Maintaining Agency for the costs of performing the work. The Local Maintaining Agency agrees, subject to compliance with applicable state law, to reimburse the State by promptly paying any such invoices within thirty days.

SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

SECTION VI: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the last date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Agreement as required by the USACE. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Maintaining Agency:
Reclamation District No. 900
ATTN: General Manager
1420 Merkley Avenue, Suite 4
West Sacramento, CA 95691

If to the Board:
Central Valley Flood Protection Board  
ATTN: Executive Officer  
3310 El Camino Avenue, Suite 170  
Sacramento, CA 95821  

If to the Funding Recipient:  
West Sacramento Area Flood Control Agency  
ATTN: General Manager  
1110 West Capitol Avenue  
West Sacramento, CA 95691  

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 section.  

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.  

SECTION IX: Standard Conditions  
This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement.  

SECTION X: Authority  
The Local Maintaining Agency has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.  

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.  

The Central Valley Flood Protection Board  
Reclamation District No. 900  

By                                            By  
Leslie M. Gallagher,                            Tim Mallen,  
Executive Officer                              General Manager  

Date:                                          Date:  

Approved as to Legal Form and Sufficiency:  

Kanwarjit Dua,                                  Ralph R. Nevis.,  
Board Counsel                                  General Counsel  

West Sacramento Area Flood Control Agency  

By                                            
Greg Fabun,  
General Manager
Agreement __________

Approved as to Legal Form
And Sufficiency:

__________________________
Ralph R. Nevis,
General Counsel
STANDARD CONDITIONS

1. GOVERNING LAW: This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

2. TIMELINESS: Time is of the essence in this OMRR&R Agreement.

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

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

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

6. PROHIBITION AGAINST DISPOSAL OF EIP PROJECT WITHOUT STATE PERMISSION: Local Maintaining Agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the EIP Project, without prior permission of the State. Local Maintaining Agency shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Local Maintaining Agency meet its obligations under this OMRR&R Agreement, without prior written permission of the State. The State may require that the proceeds from the disposition of any real or personal property acquired, reimbursed or credited with State funds be remitted to the State.

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

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

9. SUIT ON OMRR&R AGREEMENT: Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.

10. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.

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

13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Local Maintaining Agency fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default by the Funding Recipient under the relevant Funding Agreement.

14. INDEPENDENT CAPACITY: Local Maintaining Agency, and the agents and employees of Local Maintaining Agencies, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

15. CONFLICT OF INTEREST

   a) Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

   b) Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

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

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

17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Local Maintaining Agency assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
18. NONDISCRIMINATION CLAUSE: During the performance of this OMRR&R Agreement, Local Maintaining Agency and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Local Maintaining Agency and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Local Maintaining Agency and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Local Maintaining Agency and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Local Maintaining Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. DRUG-FREE WORKPLACE CERTIFICATION

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

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

   1. The dangers of drug abuse in the workplace,
   2. Local Maintaining Agency’s policy of maintaining a drug-free workplace,
   3. Any available counseling, rehabilitation, and employee assistance programs, and
   4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:

   1. Will receive a copy of Local Maintaining Agency’s drug-free policy statement, and
   2. Will agree to abide by terms of Local Maintaining Agency’s condition of employment, contract or subcontract.

Suspension of Payments: This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Local Maintaining Agency may be subject to debarment if the State determines that:

   a) Local Maintaining Agency, its contractors, or subcontractors have made a false certification, or
b) Local Maintaining Agency, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.

20. UNION ORGANIZING: Local Maintaining Agency, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Local Maintaining Agency, by signing this OMRR&R Agreement, hereby certifies that:

   a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.

   b) Local Maintaining Agency shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.

   c) Local Maintaining Agency shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.

   d) If Local Maintaining Agency makes expenditures to assist, promote, or deter union organizing, Local Maintaining Agency will maintain records sufficient to show that no State funds were used for those expenditures and that Local Maintaining Agency shall provide those records to the Attorney General upon request.

21. COMPUTER SOFTWARE: Local Maintaining Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

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

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

27. LOCAL MAINTAINING AGENCY NAME CHANGE: Approval of the State’s Project Manager is required to change the Local Maintaining Agency’s name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

28. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Local Maintaining Agency shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
Resolved by the ________________________________
(Governing body, city council, or other)
of the ________________________________
(Name of Local Maintaining Agency)
that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to
____________________________________________
(Name of Funding Recipient)
by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: __________________________________________
(Project title)
have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing [modify if Funding Recipient and Local Maintaining Agency are not the same to add: “or having a Local Maintaining Agency sign”] an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires
____________________________________________
(Name of Local Maintaining Agency)
to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of __________________________________________
(Project title)
Therefore, the __________________________________________
(Presiding officer, president, city manager, or other official)
of the ________________________________
(Name of Local Maintaining Agency)
is hereby authorized and directed to
sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the __________________________________________
(Board of Directors, Supervisors, etc.)
of the ________________________________
(Name of Local Maintaining Agency)
on __________________________________________.
(Date)

Authorized Signature ________________________________
Printed Name ________________________________
Title ________________________________
Clerk/Secretary ________________________________
Pursuant to the Governor’s Executive Order N-29-20, members of the West Sacramento Area Flood Control Agency participated in this special meeting of the Board of Directors using the Zoom meeting platform. To reduce the spread of COVID-19, members of the public were asked to watch the meeting via livestream at [https://www.cityofwestsacramento.org/Home/Components/Calendar/Event/4085/1141](https://www.cityofwestsacramento.org/Home/Components/Calendar/Event/4085/1141).

The special meeting was called to order at 9:15 AM. All members were present. Chair Ramos presided.

Entry No. 1
Heard General Administration Functions as follows:

A. Presentations by the public on matters not on the agenda.
   None

B. Report out on Closed Session
   Ralph Nevis reported that the Board met in Closed session to confer with legal counsel regarding one item listed on the Closed Session Agenda. No reportable action was taken.

C. Monthly/YTD revenue and expenses
   Jenn Tran reported on the monthly expenses for April 2020. Fund 870’s starting balance was $3.82M. There was no revenue and expenditures were $16.5k, leaving the ending balance at $3.81M. The starting balance for fund 871 was $4.11M. The Agency received $6k in revenue and expenditures were $474k, the ending balance for fund 871 was $3.64M. The Agency’s combined cash position (funds 870, 871, and 257) for the month was $17.48M.

   As of June 9, 2020, the Agency’s combined cash position was $18.93M.

   The second installment of the flood assessment was received in the amount of $2.21M. The Statement of Costs for Qtr 35 was submitted to DWR and is in review. If approved, $1.48M will be transferred from Fund 257 to 871.

The Board acted on the Consent Agenda as follows:

Entry No. 2
Adopted Resolution 20-06-01, approving a 2% increase in assessment for tax Fiscal Year 2020-21 and adopted Resolution 20-06-02, authorizing Yolo County to place special assessments on the secured tax roll in the same manner as the ordinary ad valorem property taxes.

Entry No. 3
Approved the minutes of the May 21, 2020 West Sacramento Area Flood Control Agency meeting.

MOTION: Sandeen                       SECOND: Ledesma                  AYES:       Ramos
NOES:     None                        ABSTAIN:  None                        ABSENT:   None

The items passed unanimously.

Entry No. 4
Heard General Administration Functions as follows:

A. Southport Drainage Improvement Updates
   Brian Brown gave a PowerPoint presentation on the Drainage Improvement Project.

B. Southport Borrow Site Restoration Updates
   Brian Brown gave a PowerPoint presentation on the Borrow Restoration Project.

C. WSAFCA Project Updates
Greg Fabun reported on WSAFCA project updates highlighting the following: Time Oil site, Federal Project design activities, USACE’s Economic Update, Federal Project advocacy efforts, and the Regional Flood Management Plan.

D. Director comments

There were no Director comments.

E. Adjourn

The meeting adjourned at 10:00 AM.

Minutes approved as presented by a majority vote of the Agency on August 20, 2020.

Jenn Tran, Clerk to the Agency
Flood Program Update
August 20, 2020

FINANCE

As of 8/13/2020, the Agency’s combined cash position is approx. $7.8M.

<table>
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<th>WSAFCA JPA</th>
<th>WSAFCA Cap Projects</th>
<th>STATE Advance Funding</th>
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<td>Revenue</td>
<td>5,471,799</td>
<td>12,446,198</td>
<td>7,899,066</td>
<td>25,817,063</td>
</tr>
<tr>
<td>subtotal</td>
<td>12,853,055</td>
<td>11,120,518</td>
<td>8,648,376</td>
<td>32,621,950</td>
</tr>
<tr>
<td>Expenditures</td>
<td>7,714,056</td>
<td>17,077,931</td>
<td>-</td>
<td>24,791,987</td>
</tr>
<tr>
<td>Cash Position</td>
<td>5,139,000</td>
<td>(5,957,413)</td>
<td>8,648,376</td>
<td>7,829,963</td>
</tr>
</tbody>
</table>

On August 10, 2020, staff transmitted the flood assessment to Yolo County for inclusion on the secured property tax roll. The flood assessment will appear as a line item on upcoming property tax bills. The secured roll portion of the flood assessment is the primary funding source for the Agency’s work. A smaller portion is directly billed to owners of property not included on the secured roll. Staff is currently updating that portion of the assessment and will provide an update when completed. The year over year summary is provided in the table below. The secured roll assessment increased by approximately 3.4% representing the Board approved increase (2%) and an increase in development over the past year.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>2019 ASSESSMENT</th>
<th>2020 ASSESSMENT</th>
<th>$+/-</th>
<th>%+/-</th>
<th>Parcels +/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured Roll</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FLOOD - AGRICULTURE</td>
<td>$886,784</td>
<td>$898,774</td>
<td>$12</td>
<td>1.35%</td>
<td>0</td>
</tr>
<tr>
<td>FLOOD - COMMERCIAL</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>FLOOD - RESIDENTAL - CONDO</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>FLOOD - RESIDENTAL - HIGH DENSITY</td>
<td>$1,267,099</td>
<td>$1,301,814</td>
<td>$34,715</td>
<td>2.70%</td>
<td>64</td>
</tr>
<tr>
<td>FLOOD - RESIDENTAL - LOW DENSITY</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>FLOOD - RESIDENTAL - MOBILE HOME PARK</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>FLOOD - RESIDENTAL - MULTI-FAMILY</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>FLOOD - VACANT</td>
<td>520</td>
<td>526</td>
<td>$6</td>
<td>1.15%</td>
<td>6</td>
</tr>
<tr>
<td>Secured Roll Assessment Total</td>
<td>4,902,434</td>
<td>5,069,108</td>
<td>$166,675</td>
<td>3.40%</td>
<td>140</td>
</tr>
</tbody>
</table>

PROJECTS

SOUTHPORT LEVEE IMPROVEMENT PROJECT

Real Estate Services: Staff is working on closing outstanding real estate acquisitions identified by DWR Cadastral staff. Staff has reached out to DWR to request that the submitted FAPs be reviewed for approval and send the accompanying correspondence.

Surveying Services: MTCO has completed a draft Record of Survey and submitted the draft to DWR Cadastral unit for comments.

Environmental Services in support of Real Estate/Right of Way: SCS Engineers is working on two Phase I reports, one for each of the offset mitigation areas.
**Former Time Oil Site Remediation:** SCS Engineers completed and submitted a No Further Action Request to the Regional Water Quality Control Board to close the site. We anticipate closing the site in the next quarter. Additionally, we heard from the attorney representing WSAFCA in the Time Oil bankruptcy that the Trustee has approved of our amended claim for $1.06 million and a hearing will be conducted on the 28th of August.

**Southport Borrow Restore Project:** The contractor, DeSilva Gates Construction LP, has been working on the borrow restore sites along Village Parkway since the end of May. Hauling was complete the first week of August, well before the initial mid-October estimate of completion. The contractor was able to get more trucks on the road and haul times were significantly reduced (more truck trips per day) primarily due to light COVID-19 traffic. After the hauling is complete, the contractor will work on the project sites, grading and removing groundwater wells, before slurry sealing Gregory Avenue from Jefferson Blvd to South River Road. Prior to the slurry seal, WSAFCA is having Public Works do pothole repair and fill cracks along Gregory Avenue to maximize the effectiveness of the slurry seal. The project is expected to be wrapped up by the end of August.

**Southport Phase II – Levee Improvements:** The BOSC completed the Project Summary Report. That completes the Safety Assurance Review for the project.

**Borrow One Site:** The property is currently being farmed by Viera Farms.

**SOUTHPORT RESTORATION PROJECT**

**Irrigation and Planting:** River Partners Replanted over 1600 plants and trees this past month to account for the plant losses that were calculated in the plant census. River Partners continues to conduct maintenance activities including irrigation, herbicide spraying, and hand-weeding.

**NORTH AREA PROJECT CLOSEOUT** – North Area real estate is mostly completed. Staff has received approvals and payments for the acquisition on the Rivers EIP and received approval for most of the I Street acquisitions. Finalization of the record of survey and real estate rights transfer remain and should be routine. Staff and WSAFCA counsel are clearing title on the remaining two I Street parcels. Project closeout documentation and reports have been submitted to DWR.

**FEDERAL PROJECT**

**Yolo Bypass East Levee (YBEL) Design:** Bi-weekly meetings with the Project Delivery Team (WSAFCA/USACE/DWR) are on-going as well as weekly check-in calls with the MGE design team.

**Design** – The 65% design milestone was completed and plans & specs and cost estimates submitted to the Agency and Corps for review on June 22 according to schedule. The various concurrent/required Corps reviews – Agency Technical Review, DQC, etc. – have been completed. There were only a few critical comments related to the recommended seepage berm width in Segment AA – the design team and the Corps tech leads are working through that issue. All other comments were "normal". The Safety Assurance Review comments were received the week of 8/3 and a meeting to discuss SAR comments was held 8/7, with no "critical" items noted. The Corps Risk Cadre for review process is complete and the final report is due mid-August.

Results of the Low Flow Wind-Wave Run-up analysis that recommends rock revetment in Segments Z thru AC went through a second round of comments by the Corps so did not make it into the 65% design deliverable. Since then, plans have been shared with the Corps with little fanfare.

**Environmental** – With the completion of the 65% design deliverable, staff and our consultant, ESA, kicked off the environmental review process with the Corps the week of 8/3. First steps are to develop a basic project description, evaluate how that deviates from what was described in the GRR, and to confirm what items, if any, were not completed by the GRR EIS/EIR that were “punted” to the project level analysis.
Economic Update: USACE District staff is performing a biannual economic update of the Project. Staff provided an updated schedule that reprioritizes the remaining levee segments for construction and also reduces the schedule to 9 years (starting in 2017 with Southport). The Corps confirmed it will use the schedule in the update. By our calculations, the schedule will significantly reduce "interest during construction" costs, resulting in a benefit cost ratio close to 2.6 to 1. The update is currently out for Agency Technical Review (ATR).

FEDERAL BUDGET/ADVOCACY

2021 Appropriations Process: The House passed 10 of its 12 appropriations bills the first week of August, including the FY 2021 Energy & Water appropriations bill (H.R. 7617), which was bundled in a six appropriations bill package. The bill provides a total of $7.63 billion, an increase of $1.7 billion above the President’s budget request. For the Construction Account, the bill provides $2.6 billion, $447 million above the President’s budget request. The bill provides for seven new study starts and seven new construction starts – only one of the seven is guaranteed for flood projects. In addition, the bill provides an additional $17 billion in emergency funding to accelerate work on Corps projects. $10 billion of which would be available for the Corps three mission areas: flood, navigation, and ecosystem restoration with no limit on new starts. This emergency funding does not have bipartisan support and is not expected to be supported by the Senate. Speaking of the Senate, there has been no visible movement on appropriations bills. Staff has been in contact with the Corps’ District staff regarding a budget request for the West Sac Project if Corps projects are included in an infrastructure stimulus package. Finally, no response has been received from the Mayor’s request for a video conference meeting with the Assistant Secretary of the Army regarding the West Sac Project.

WRDA 2020 passed the House the last week in July (HR 7575). Negotiations have been ongoing regarding the scope of the next COVID response package w/ no resolution before the August recess.

FY 2019 Work Plan: Corps received $400,000 for PED.

FY 2020 Budget and Work Plan: Corps received $400,000 and $1,072,000, respectively for PED.

FY 2021 President’s Civil Works Budget Request: $2,028,000 to complete PED.

WSAFCA FEDERAL LOBBYING EFFORT (FWC) – JUNE/JULY

- Coordinate with client regarding coordination with Corps’ Sacramento District and South Pacific Division on potential funding and New Start opportunities.

- 2021 Funding & New Start
  - Monitor & report on FY 2021 Corps of Engineers funding legislation.
  - Monitor & report on potential COVID 19 infrastructure funding.

- WRDA 2020
  - Coordinate with House and Senate (CA members) on Yolo proposal.

- Other
  - Monitor activity relating to funding opportunities in COVID-19 and Infrastructure legislation generally.
  - Coordinate with CoE HQ and CA Members regarding potential virtual meetings with client

- Weekly coordination calls with WSAFCA General Manager and Flood Protection Planner

DEEP WATER SHIP CHANNEL EAST DRAINAGE REPAIR PROJECT – Project complete. Project documentation report complete. Credit package is being prepared to submit to the Corps.
PUBLIC RELATIONS

Nothing to report.

FLOOD INSURANCE

National Flood Insurance Program (NFIP) – The City’s recent Community Rating System (CRS) annual recertification package was submitted to FEMA at the end of July. This annual recertification is required for the City to maintain their community ranking that credits community efforts beyond the minimum standards by reducing flood insurance premiums for the community’s property owners. The City is currently at a CRS rating of 6, which offers residents and business owners a 10% discount on flood insurance premiums.

FLOOD PLAIN ADMINISTRATION

Floodplain Management – The updated plan was posted on the flood website.

EMERGENCY PREPAREDNESS

2020 Emergency Preparation/Flood Season Coordination – Nothing to report

COORDINATION WITH OTHER ACTIVITIES

Regional Flood Management Plan – DWR and the Agency have finally executed the contract to accept the grant funds with an effective date of July 1, 2020. Accordingly, staff executed the contract with MBK to lead the RFMP team. Both of these contracts were approved by the Board in May.

FUTURE

September 17, 2020 – WSAFCA Board Meeting