

November 2, 2016

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**Subject: Letter of Mutual Understanding: Cost-Sharing for the Bacon Island Levee
Rehabilitation Project**

Dear Urban Water Agency Managers:

In January 2012, the California Urban Water Agencies (CUWA) prepared a paper titled “Urban Water Agencies Strategy for Delta Levees – List of Priority Levee Projects,” which defined the levee rehabilitation projects that could provide water supply reliability benefits for all urban water agencies that receive water from supply that moves through the Delta levee channels or through pipeline infrastructure that crosses the Delta. The paper emphasized the importance of protecting water supply infrastructure during and following major seismic or flood events and the need to fortify levees supporting critical water conveyance. Bacon Island was included at the top of the list of proposed levee projects on the Old and Middle River freshwater corridor.

In July 2014, Reclamation District 2028 (RD 2028) submitted a conceptual grant proposal for the Bacon Island Levee Rehabilitation Project (the Project) in response to the California Department of Water Resources 2014 Delta Levees Special Flood Control Projects Program - Project Solicitation Package for Multi-Benefit Projects. Out of 26 proposals submitted, the Project was one of five invited to submit a detailed proposal. RD 2028 submitted a detailed grant proposal for the Project in September 2014 which was subsequently approved for funding by DWR on February 17, 2015.

The Project would rehabilitate approximately 5 miles of levees on Bacon Island along Old River and create several acres of native grassland and scrub shrub habitat (Attachment A). Engineering would be performed to develop a design cross section (Attachment A) that would sustainably meet, at a minimum, the state’s Hazard Mitigation Plan levee requirements. The Hazard Mitigation Plan levee requirements are a first step at improving levee stability and storm water overtopping. The proposed Project requires RD 2028 to undertake environmental review and mitigation, engineering, planning, construction, and contract management.

The Project would result in a more stable levee along a portion of Bacon Island, which would reduce the risk of a levee failure in the rehabilitated segment. This, in turn, would reduce other associated risks to water supply, such as the potential for salinity intrusion that could jeopardize the water supply for local in-Delta, State Water Project, and Central Valley Project export interests. The estimated Project cost is \$10.527 million.

Each of our agencies benefits from improving urban water supply reliability and is willing to contribute to the Project to ensure this benefit is achieved. RD 2028 and a coalition of seven urban water agencies have been collaborating to develop funding partnerships for the Non-State share of the Project cost. The urban water agencies are: Alameda County Water District, Contra Costa Water District, East Bay Municipal Utility District, San Francisco Public Utilities Commission, Santa Clara Valley Water District, Zone 7 Water Agency, and The Metropolitan Water District of Southern California (hereinafter each an Agency or collectively, the Agencies).

This Letter of Mutual Understanding (LOMU) is an agreement between the Agencies to identify the total cost share for each Agency toward the Non-State cost share of the Project. The Project is a 'one-time' project that does not set a precedent for future projects or future investments by any of the Agencies.

As the California Department of Water Resources (DWR) has selected the Project for funding of 97 percent of the Project cost, our Agencies shall agree to the following terms.

Conditions Precedent

The following are conditions precedent for the funding commitments contained herein. In the event that a condition precedent is not met, the commitments in this LOMU shall become null and void.

- (1) The Bacon Island Levee Project is approved for the DWR grant;
- (2) RD 2028 enters into a funding agreement with DWR ("DWR Funding Agreement"). The executed DWR Funding Agreement is provided in Attachment B;
- (3) RD 2028 shall submit a scope of work to DWR and provide a copy to the Agencies. The scope of work shall include draft environmental documentation.
- (4) RD 2028 shall complete its review of the project in compliance with the California Environmental Quality Act (CEQA) and submit the completed environmental documentation to the Agencies. Each Agency, according to its own judgment, shall take any additional CEQA actions it determines are required for its participation in this LOMU.
- (5) RD 2028 and Contra Costa Water District (CCWD) shall, to the satisfaction of the Agencies, enter into a Local Funding Agreement that describes the mutual interests and obligations of RD 2028 and the Agency signatories to the LOMU relative to the cost-share proposed, and incorporates the scope of work and other essential requirements of the DWR Funding Agreement. The draft Local Funding Agreement shall be substantially in the form attached hereto as Attachment C.

Funding Allocations and CCWD Responsibilities

Under the LOMU, each Agency shall contribute funds and/or services to the Project. The LOMU sets forth the terms and conditions: (i) for the not to exceed amount allocation of funding/in-kind services contributions by each Agency and (ii) by which CCWD shall act as the fiscal agent for the Agencies, and the liaison and administrator of the processing of project invoices from RD 2028 to the Agencies and the distribution of funds from the Agencies.

CCWD will act as the fiscal agent for the Agencies, and will, as part of CCWD's in-kind services, invoice the Agencies for their share of the Non-State costs for the Project according to the terms in Attachment D. This letter serves to commit each agency to pay to CCWD its respective share of the Project costs pursuant to this LOMU and the Local Funding Agreement upon fulfillment of the conditions precedent.

Budget

The total cost of the Project is estimated at \$10.527M. Of the total, up to \$10.211M will be provided from DWR and up to \$315,810 will be provided by the Agencies. Each Agency, by countersigning below, agrees to fund a portion of the Non-State cost share as described in Attachment D.

East Bay Municipal Utility District and San Francisco Public Utilities Commission will provide in-kind technical review and implementation support services based on their recent completion of separate levee rehabilitation projects in the Delta. In-kind funding will also be provided by PG&E to relocate a 22-inch diameter high pressure natural gas line that crosses through the levee in the Project area, as well as overhead electrical utilities around the perimeter of Bacon Island. The high pressure gas line will be relocated either over or under the rehabilitated levee in order to provide the maximum protection for the rehabilitated levee. The overhead electrical utility lines in the Project area will also be raised or relocated. RD 2028 will coordinate with PG&E to ensure the utilities are relocated as appropriate in accordance with the terms of PG&E's utility easements on Bacon Island. PG&E will be responsible for permitting, design, implementation, and maintenance of the utility relocation and will provide all the funding required for this work. The cost to relocate PG&E's utilities is not included in the \$10.527M Project cost but is anticipated to be in excess of \$100,000.

In-kind funding will also be provided by RD 2028, through approximately 30 acres of farmland which will be taken out of production to provide on-site borrow materials for the Project. The use of onsite borrow materials will allow RD 2028 to complete the levee rehabilitation at a significant cost savings to the overall Project. This costs savings will enable a greater portion of the levee to be rehabilitated than would otherwise be possible if imported fill were required for the entire Project. Furthermore, the costs associated with constructing and maintaining the habitat improvements will be incurred by RD 2028. RD 2028 will also provide staff time to plan and implement the Project, as well as administer the grant. The 30 acres of land and the costs incurred by RD 2028 are not included in the total Project cost but are anticipated to have a value in excess of \$100,000.

Preliminary Schedule

	Anticipated Completion Date
Submit grant proposal	September 2014
Grant award notification	February 2015
RD 2028 and DWR execute funding agreement	December 2015
Agencies enter into Letter of Mutual Understanding	November 2016

Local Funding Agreement entered	November 2016
Environmental documentation and scope of work to DWR and Agencies	December 2016
DWR approves scope of work	March 2017
Environmental documentation finalized CCWD issues first invoice	March 2017
Construction contract awarded CCWD issues second invoice	June 2017
Substantial completion CCWD issues final invoice	December 2018

Term

This Agreement shall be effective upon the last signature and shall terminate upon completion of the Project, or sooner as permitted by its terms, the terms of the Local Funding Agreement, the DWR Funding Agreement, or by action of the Committee described below in the LOMU Administration section.

Limitations

By agreeing to fund the Non-State cost share, the Agencies do not assume responsibility for the implementation, operation, maintenance, or performance of the Project. RD 2028 will be responsible for the implementation, operation, present and future maintenance, and performance of the Project.

Under this LOMU, the Agencies will not have any project management role in RD 2028's design and construction of the project. If RD 2028 fails to implement the project as described in the approved scope of work, the State Agreement, or in accordance with any mutually agreed upon amendment to those agreements, or in accordance with the terms of this Agreement, the Agencies will have no further obligation to pay. Likewise, should the State Agreement be terminated, for any reason, the Agencies will have no further obligation to pay. If DWR requires reimbursement because DWR determines that the work done has not been satisfactorily performed, the RD will likewise reimburse the Agencies for the portion of funding that has been expended on the unsatisfactory work.

This letter and participation in the Project does not obligate or imply an obligation of the Agencies individually or collectively to participate in future projects.

LOMU Administration

In order to coordinate Agencies' involvement in the LOMU, a Committee consisting of the Managers of each Agency will be established. Each Manager agrees to identify a staff representative from their Agency and to allocate sufficient resources such that their staff representative may participate in meetings and conference calls as required. Staff activity will report to and receive direction from the Committee. The Committee will resolve any dispute related to this agreement. Decisions of the Committee will be made by majority vote.

Amendments

Any amendments must be agreed upon by the Committee created for administration of the LOMU in writing and signed by duly authorized representatives of each Agency.

Please send me your electronic signature as noted below and I will send out an electronic copy of the accepted and approved letter to each Agency. We look forward to working cooperatively with you on this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Brown", with a long horizontal flourish extending to the right.


Jerry Brown
General Manager

MP/MM:wec

Attachments

ACCEPTED AND APPROVED:

Robert Shaver
General Manager
Alameda County Water District



Date
11/22/16

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission

Date

Alexander R. Coate
General Manager
East Bay Municipal Utility District

Date

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District

Date

Jeffrey Kightlinger
General Manager
Metropolitan Water District of
Southern California

Date

G.F. Duerig
General Manager
Zone 7

Date

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District


Date _____

G.F. Duerig General Manager Zone 7	Date
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ACCEPTED AND APPROVED:

Robert Shaver
General Manager
Alameda County Water District

Date

 12.12.2016

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission

Date

Alexander R. Coate
General Manager
East Bay Municipal Utility District

Date

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District

Date

Jeffrey Kightlinger
General Manager
Metropolitan Water District of
Southern California

Date

G.F. Duerig
General Manager
Zone 7

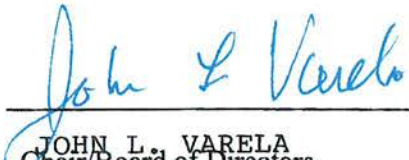
Date

ACCEPTED AND APPROVED:

Robert Shaver
General Manager
Alameda County Water District
Date

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission
Date

Alexander R. Coate
General Manager
East Bay Municipal Utility District
Date



JOHN L. VARELA
Chair/Board of Directors
Santa Clara Valley Water District
1/10/17
Date

Jeffrey Kightlinger
General Manager
Metropolitan Water District of
Southern California
Date

G.F. Duerig
General Manager
Zone 7
Date

ACCEPTED AND APPROVED:

Robert Shaver
General Manager
Alameda County Water District

Date

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission

Date

Alexander R. Coate
General Manager
East Bay Municipal Utility District

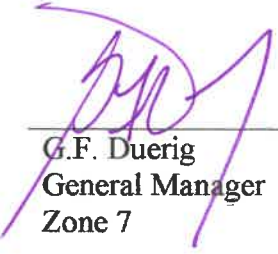
Date

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District

Date

Jeffrey Kightlinger
General Manager
Metropolitan Water District of
Southern California

Date


G.F. Duerig
General Manager
Zone 7

14 Nov 2016
Date


ACCEPTED AND APPROVED:

Robert Shaver
General Manager
Alameda County Water District
Date

Michael Carlin
Deputy General Manager
San Francisco Public Utilities
Commission
Date

Alexander R. Coate
General Manager
East Bay Municipal Utility District
Date

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District
Date

 5/4/17

Jeffrey Knightfinger
General Manager
Metropolitan Water District of
Southern California
Date

G.F. Duerig
General Manager
Zone 7
Date

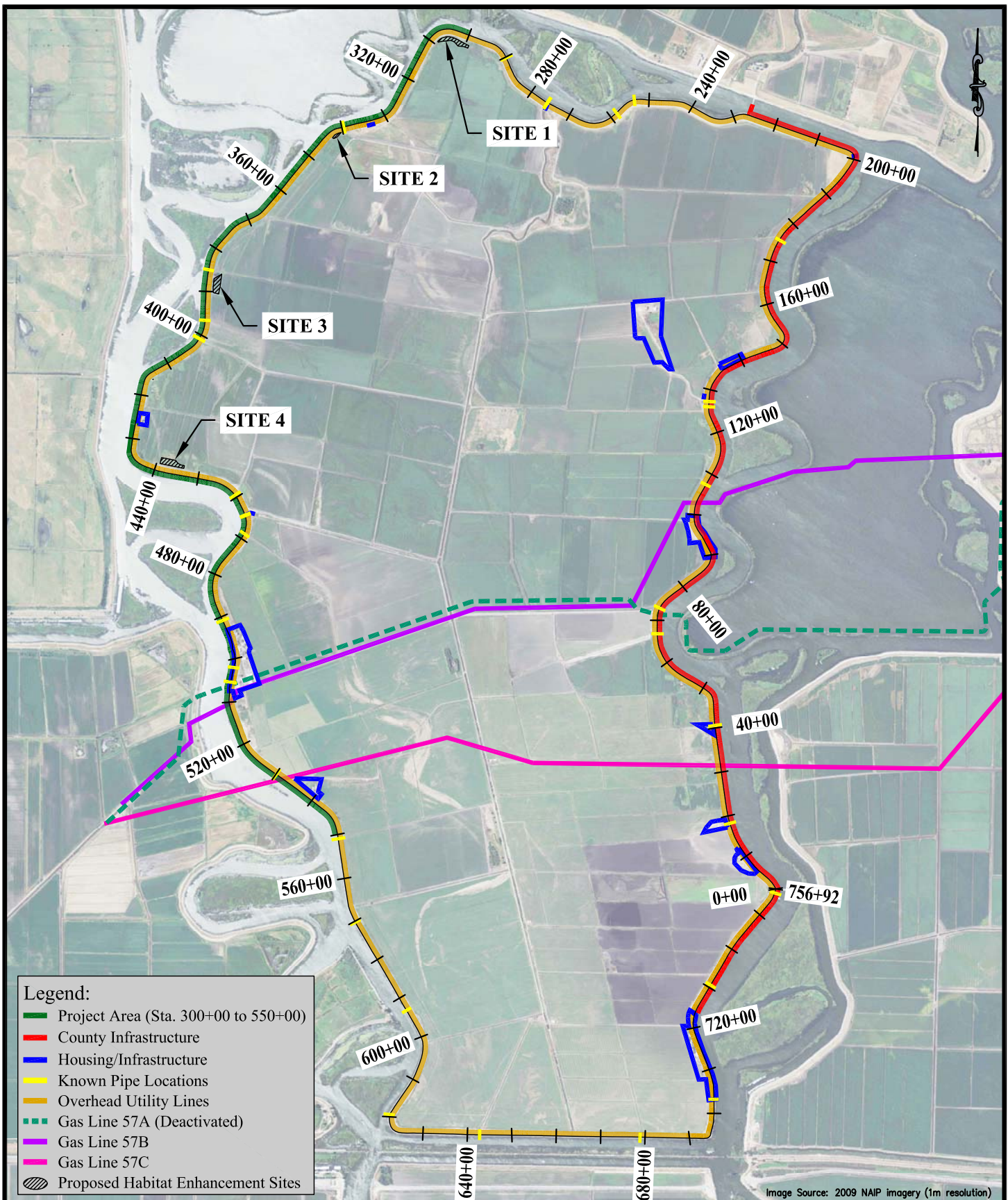


Image Source: 2009 NAIP imagery (1m resolution)



455 University Avenue, Suite 100
Sacramento, California 95825
Phone: (916) 456-4400 • Fax: (916) 456-0253

RECLAMATION DISTRICT NO. 2028
BACON ISLAND

PROJECT MAP

SCALE: 1" = 3000'

JOB NUMBER: 4290-12

DRAWN BY: JB

DATE:	05/15/2015
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SHEET: 1 OF 1

PROJECT FUNDING AGREEMENT
for Design and Construction of District
Multi-Benefit Project on Bacon Island
Agreement No. BN-15-1.0-SP

This Agreement is made and entered into by and between the Department of Water Resources of the State of California, hereinafter referred to as "Department," and Reclamation District No. 2028 (Bacon Island), a political subdivision of the State of California, hereinafter referred to as "Local Agency" or "District."

WHEREAS, California Water Code Section 12311(a) directs the Department to develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, for the Towns of Thornton and Walnut Grove, and for approximately 12 miles of levees on islands bordering Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough and other locations in the Sacramento-San Joaquin Delta, hereinafter referred to as "Delta"; and

WHEREAS, Water Code Section 12312 authorizes the Department's expenditures for flood protection and related habitat mitigation and improvement projects, and requires the Department to seek cost-sharing with beneficiaries, owners, or operators of public facilities benefited by the flood protection projects; and

WHEREAS, Water Code Section 12314 provides that expenditures must be consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the Delta; and

WHEREAS, Water Code Section 12315 allows such projects to be undertaken by the Local Agency pursuant to an agreement with the Department; and

Whereas the Department has published the Delta Levees Special Flood Control Projects: 2014 Guidelines for Providing Funding to Local Public Agencies (hereinafter referred to as "Guidelines") that specify requirements for work under this agreement; and

Whereas the District has either hired or contracted with a State of California Registered Civil Engineer (hereinafter referred to as "Engineer") to meet the requirements specified in the Guidelines; and

WHEREAS, the Local Agency and its Engineer have determined that the levees of Bacon Island are in need of rehabilitation and the proposed work is necessary (hereinafter referred to as the "Project"); and

WHEREAS, the Local Agency plans to undertake its Project for the Bacon Island levee where it has been found that the levee is narrow, and the slopes of the levee are over-steepened; and

WHEREAS, the Local Agency in its request for Department funding assistance, dated September 15, 2014 proposes to place fill on the landside of the levee slope and levee crown, construct an all-weather roadway on the levee crown, armor the newly

placed fill with quarry stone on the upper waterside, and incorporate landside habitat enhancements; and

WHEREAS, the Department concurs with the District and its Engineer that Department funding for the District's Project is needed to protect identifiable public benefits; and

WHEREAS, on June 13, 2014, the Department released a "Delta Levees Special Flood Control Projects, Projects Solicitation Package For Multi-Benefits Projects" (PSP) in the amount of \$75 million requesting proposals for multi-benefit projects; and

WHEREAS, the PSP and its criteria were prepared in accordance with the Guidelines; and

WHEREAS, the intent of the PSP was to provide assistance to levee works that fully integrate levee improvement, habitat enhancement features, and export water supply reliability; and

WHEREAS, the Department received 26 proposals from Local Agencies; which were evaluated and scored in accordance with the PSP and the Guidelines scoring criteria; and

WHEREAS, the Department may provide partial funding to the Local Agency for planning and design of the project, and completion of California Environmental Quality Act (CEQA) documents; and

WHEREAS, a catastrophic failure of the District's levee in this area would result in property damage, negative environmental impacts, and damage to state water supply and quality due to salinity intrusion from the San Francisco Bay Estuary; and

WHEREAS, the Project's benefits will be consistent with the aquatic and wetland habitat goals and objectives set forth in CALFED's Ecosystem Restoration Program Plan, the San Francisco Estuary Project's Comprehensive Conservation and Management Plan, the Central Valley Project Improvement Act, the Anadromous Fish Restoration Plan, and the fisheries recovery strategies described in the November 1996 Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes; and

WHEREAS, this Project will provide opportunities for ecosystem restoration, flood control, water supply and water quality benefits, and conveyance while enhancing levee system integrity consistent with Water Code Section 79553; and

WHEREAS, State funding for the District's Project is consistent with the objectives of the Special Flood Control Project Program, and is consistent with the Delta

ecosystem restoration strategy of the CALFED Bay-Delta Program (Water Code Section 12300(d) and (b)); and

WHEREAS, Water Code Sections 12314 and 79050 provide that expenditures must be consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the Delta; and

WHEREAS, the Local Agency will be required to develop habitat or purchase mitigation credits to mitigate for habitat losses from the proposed levee maintenance and improvement works if impacts are not avoided; and

WHEREAS, Local Agency and Department and California Department of Fish and Wildlife (CDFW) agree that Local Agency has met all of the requirements of Water Code Section 12314 and Water Code Section 12987 in its previous agreements with the Department.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. This Agreement covers Department reimbursement for the Local Agency's Project for engineering and construction of levee, habitat improvement, and rehabilitation activities which will consist of rehabilitating the District levee to sustainably meet HMP standards by placing fill on the levee crown and landside slope, placing quarry stone rip-rap along the newly placed fill on the upper waterside of the slope, constructing a new all-weather roadway, and incorporating habitat enhancements from Stations 300+00 to 550+00, or stationing as modified by the Department and includes the following tasks:
 - a) Construction Engineering Services - This task includes engineering, design, topographic surveys, preparation of a Scope of Work (SOW) and plans and specifications, preparation of bids, generation of cost estimates, construction inspection, engineering contract administration, geotechnical evaluation of material placement, compaction testing, preparation of monthly reports, evaluation of billings, funding source coordination, preparation of as-built drawings, and final reports.
 - b) Levee Construction – This task, outlined in the September 15, 2014 Full Application from the Local Agency, includes improvement and/or rehabilitation of the levee at the Bacon Island levee system, from Stations 300+00 to 550+00.

- c) Habitat Enhancement Construction – The task, outlined in the September 15, 2014 Full Application from the Local Agency, includes the implementation of the proposed habitat enhancement at the Bacon Island levee system, from Stations 300+00 to 550+00, including measures to ensure the success of plantings.
 - d) Field Investigations - This task includes field surveys, geotechnical investigation and design, field and soil surveys pertaining to borrow material assessments, soil surveys to determine foundation conditions, biological surveys, and preparation of reports and design files comprised of the data collected in the surveys.
 - e) Permitting - This task includes, but is not limited to, obtaining the necessary permits from the U.S. Army Corps of Engineers, National Marine Fisheries Service, CDFW, the Central Valley Regional Water Quality Control Board, and other agencies, complying with the California Environmental Quality Act and related laws, and providing CDFW pre-project AB360 impacts and mitigation estimates.
 - f) Mitigation - This task includes either the purchase of mitigation credits at a CDFW approved mitigation bank or securing land along with the creation of legal documents that will allow for the creation, preservation and long-term management of habitat at a site that is acceptable to CDFW.
- 2. Subject to the availability of State funding and any sharing of costs or financial assistance pursuant to Water Code Section 12312, the Department shall pay up to 97 percent of the cost of work performed by the Local Agency under this Agreement, not to exceed a total amount payable of \$10,211,190 for the Project. No payment or reimbursement shall be made for Local Agency administrative services.
 - 3. Reimbursement of automobile mileage that is related to project business will follow the prevailing Federal Standard mileage rate for the cost of operating an automobile. No payment will be made for administrative costs related to mileage.
 - 4. The Department reserves the right to later review the Local Agency's ability to pay to determine if conditions have changed for reimbursement of future projects.
 - 5. Subject to the availability of funds pursuant to this Agreement, Local Agency shall be responsible for providing Local Agency personnel and/or a construction contractor(s) to implement construction measures for its Project in accordance with directions of the District and its Engineer.

6. The Local Agency shall prepare and submit a SOW, District Engineer-approved final plans and specifications, and geotechnical studies/evaluations for the work to be performed. All technical documents and drawings shall be approved by a California registered civil engineer, prior to being submitted to the Department. The Department shall review and concur with the SOW to be performed pursuant to this Agreement prior to any Project costs (excepting those costs related to preparing the SOW) being incurred by Local Agency and shall approve all costs and/or invoices submitted by Local Agency's consultants, contractors, or subcontractors prior to payment by Local Agency. Any Project costs, except those costs related to preparing the SOW, incurred prior to Department concurrence with the SOW shall be ineligible for reimbursement by the Department pursuant to this Agreement. The Local Agency shall also submit the SOW to CDFW for review and approval. The SOW shall include a complete project description and costs of all activities along with schedules and completion dates. The schedule will include time for a review of the draft and final plans and specifications by the Department. Any construction costs of the Project incurred by the Local Agency prior to Department review of the District's final plans and specifications shall be ineligible for reimbursement. For reimbursement purposes, Local Agency shall release payments to consultants for work associated with this Agreement only if authorized by the Department. Invoices submitted by Local Agency to Department shall provide detailed descriptions of Project tasks and work performance dates.
7. The Department may pay in advance for the work covered by this Agreement. The amount of such advance payments shall correspond with the expected costs associated with the Local Agency's Project for six months, or as specified by the Department. The total amount of advance payments shall not exceed 90 percent of the total amount payable under this Agreement. If the Department finds that work under this Agreement has not been satisfactorily performed, or where advances exceed total actual reimbursable expenses, Local Agency shall promptly remit to the Department all amounts advanced in excess of total final reimbursable costs as directed by the Department. Upon request of the Department, and before any advance, Local Agency shall post a bond, provide a letter of credit, or execute a deed of trust or other form of security acceptable to the Department that ensures faithful performance of the work set forth in this Agreement. In the event that Local Agency has an outstanding obligation with the Department pursuant to this paragraph, the Department may seek such reimbursement from the Local Agency by any appropriate means, including but not limited to collecting any amount owing to Local Agency from the Department or the Central Valley Flood Protection Board under the Delta Flood Protection Program.

8. If the Department provides an advance payment under this Agreement and the Local Agency will not expend the funds within thirty days, the Local Agency shall deposit the funds in an insured account that is acceptable to the Department, with any interest accruing to the benefit of the State.
9. Local Agency shall submit quarterly progress reports to the Department to account for Project Expenses covered by any advance payment(s) provided to the Local Agency pursuant to Paragraph 5. Local Agency must also submit to the Department progress reports covering all remaining reimbursable Project expenses in excess of the total allowable advance payment set forth in this Agreement, but not exceeding the total amount payable under this Agreement. The Department will pay Local Agency no more frequently than monthly in arrears for expenses in excess of the total allowable advance payments. Progress reports for District's Project under this Agreement shall include a detailed description of the work performed including a photographic summary as well as a detailed accounting of expenses incurred (additional copies can be transmitted in digital format). Detailed expense reports shall consist of, but not be limited to the following: invoices, rental receipts, employee time sheets, and receipts for supplies and equipment. The Department shall make all reasonable efforts to process payments for costs in excess of the advance payment, but not exceeding the total amount payable under this Agreement, on a timely and high-priority basis following progress report submittal. Progress reports shall reference the title of this Agreement and be mailed to the Department of Water Resources, 1416 9th Street, Room 1601, P.O. Box 942836, Sacramento, California 94236-0001, Attention: Delta Levees Program.
10. Draft and Final Completion Reports with as-built drawings, final geodetic survey information, and photographs shall be submitted by the District to the Department at the completion of the Project.
11. The Department shall pay 90 percent of the costs determined to be eligible for reimbursement as provided in Paragraph 2 of this Agreement and as specified in the Guidelines. The remaining 10 percent, hereinafter referred to as "retention," shall be paid following successful completion of all services to be performed under this Agreement. The following conditions must be met before retention is released under this Agreement:
 - a) The Department reserves the right to inspect the District's Project at any time, including before release of retention.
 - b) The Department requires a Completion Report and a set of as-built drawings be provided to the Department at completion of the Project. Any changes must be fully documented. Additionally, at completion of its

Project, Local Agency shall provide for a final inspection and certification by its Engineer that the Project has been completed in accordance with plans and specifications and any modifications thereto and in accordance with this Agreement.

- c) The Department shall not release retention for levee rehabilitation construction and mitigation implementation under this Agreement until CDFW has received an AB360 Post Project Retention Release Form, has performed a post project inspection, if necessary, and made a written determination that all habitat mitigation implementation relating to levee rehabilitation construction under this Agreement has been completed to the satisfaction of CDFW.
 - d) Subject to Department and CDFW authorization, retention for construction may be released prior to retention for engineering if construction has been completed to the satisfaction of the Department and CDFW.
12. The Local Agency shall provide the Department with all relevant engineering/biological data compiled or obtained for the Project. Data monitoring the progress of the on-site construction activities, including, but not limited to piezometer and settlement data, will be provided on a quarterly basis to the Department in digital format. Data collected upon completion of the Project, including, but not limited to as-built surveys, material quantities, quality test data, surveys, and topography shall be provided prior to final reimbursement to the Local Agency, and will be supplied to the Department in both hard copy and digital format. The Department retains the right to maintain and utilize these data in support of any of its activities.
13. If, during the performance of work on the Project, unforeseen conditions are discovered or events occur that make it clear that the cost of completing work described in this Agreement may exceed the total amount established in Paragraph 2, or that significant changes are necessary to the work, Local Agency shall immediately notify the Department in writing and the parties shall consult with respect to the problem.
14. No employee, officer, employer, or agent of Local Agency shall participate in the selection or in the award or administration of a contract supported by State funds if a conflict of interest, real or apparent, would be involved. The Local Agency shall comply with all applicable laws on conflict of interest including, but not limited to the following: Public Contract Code (PCC) Sections 10335.5 *et seq.*, PCC Sections 10365.5 *et seq.*, PCC Sections 10410 *et seq.*, and Government Code Sections 1090 *et seq.*, and 81000 *et seq.*

15. Local Agency shall be responsible for compliance with competitive bidding, prevailing wage provisions, contract administration laws, and all applicable labor laws including, but not limited to, Public Contract Code Section 20920, et seq., Water Code Section 50907; and Labor Code Section 1720 et seq. and 1770 et seq. Prior to awarding a contract for a public works project funded in whole or in part under Proposition 84, or any other source of funding so requiring, Local Agency shall adopt and enforce a labor compliance program pursuant to Labor Code Section 1771.5. Local Agency must also specifically comply with California Labor Code Section 1773.3 (Duty to notify the California Department of Industrial Relations (DIR) when awarding a contract for a public works project). Construction work performed by Local Agency forces may be exempt from competitive bidding and shall be reimbursed pursuant to the equipment rates established by Caltrans (annual labor surcharge and equipment rental rates) and the Delta Levees Subventions Program. These equipment rental rates are available on the internet at <http://www.dot.ca.gov/hq/construc/>.
16. In accordance with Water Code Section 9140, if Local Agency is responsible for the operation and maintenance of a project levee, or if Local Agency operates and maintains a non-project levee that also benefits land within the boundaries of the area benefited by a project levee, Local Agency shall prepare and submit to Department, on or before September 30th of each year, a report of information for inclusion in periodic flood management reports prepared by Department relating to the project levee. The information shall include all of the following:
 - a) Information known to the local agency that is relevant to the condition of the levee.
 - b) Information identifying known conditions that might impair or compromise the level of flood protection provided by the levee.
 - c) A summary of the maintenance performed by the local agency during the previous fiscal year.
 - d) A statement of work and estimated cost for operation and maintenance of the levee for the current fiscal year, as approved by the local agency.
 - e) Any other readily available information contained in the records of the local agency relevant to the condition or performance of the levee, as determined by the Central Valley Flood Protection Board or the Department.
17. In accordance with Water Code Section 9650, if Local Agency receives funding from the State to upgrade a project levee that protects an area in which more

than 1,000 people reside, Local Agency responsible for the project levee and any city or county, including charter cities or counties, protected by the project levee shall enter into an agreement to adopt a safety plan within two years. The safety plan shall be integrated into any other Local Agency emergency plan and shall be coordinated with the state emergency plan. The local entity responsible for the operation and maintenance of the project levee shall submit a copy of the safety plan to the Department and the Central Valley Flood Protection Board. No advances or reimbursements shall be made by the State for a levee covered by this paragraph until it receives the agreement from all necessary entities. The safety plan shall include all of the following elements:

- a) A flood preparedness plan that includes storage of materials that can be used to reinforce or protect a levee when a risk of failure exists.
 - b) A levee patrol plan for high water situations.
 - c) A flood-fight plan for the period before the State or federal agencies assume control over the flood fight.
 - d) An evacuation plan that includes a system for adequately warning the general public in the event of a levee failure, and a plan for the evacuation of every affected school, residential care facility for the elderly, and long-term health care facility.
 - e) A floodwater removal plan.
 - f) A requirement, to the extent reasonable, that either of the following applies to a new building in which the inhabitants are expected to be the essential service providers:
 - 1. The building is located outside an area that may be flooded.
 - 2. The building is designed to be operable shortly after the floodwater is removed.
18. Local Agency shall provide all lands, easements, and rights-of-way necessary to complete the Project.
19. Local Agency may be eligible for reimbursement for removal and/or relocations necessary to perform the work described in this Agreement. Actual reimbursements shall be at the sole discretion of the Department. Reimbursement for removal and/or relocations of eligible structures shall be made on a case by case basis based on the following criteria:

- a) Any relocation costs associated with structures within an existing levee footprint will be eligible for reimbursement at the same rates as other Project construction costs.
 - b) Any structures outside of the existing levee footprint, but within the footprint of the rehabilitated levee or within the construction work area, must be removed, relocated, or otherwise dealt with at the expense of Local Agency or the owner.
 - c) Where structures extend both through the existing levee and into the adjacent landside work area, the cost to remove the encroachment shall be appropriately divided between the Project and the Local Agency before work begins.
20. Local Agency, its Engineer, contractors, subcontractors, and their respective agents and employees required for performing any work for the Project shall act in an independent capacity and not as officers, employees, or agents of the State. Local Agency is solely responsible for planning, design, construction, maintenance, and operation of the Project. Any review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Local Agency's responsibility for its Project. Local Agency shall cooperate in the conduct of any State review or inspection.
21. Local Agency shall maintain records and books relating to the costs and quantities of labor and materials used, purchased, or constructed for, in the performance of this Agreement. The Department shall have full and free access at all reasonable times to review these books and records with the right at any time during office hours to make copies thereof. The Department or the State Controller shall have the right to conduct audits of Local Agency's expenditures for the work done under this Agreement, the purpose of such audits to assure that Special Projects monies are being properly used, that payments are not being made under different assistance programs for the same work, and that Local Agency is seeking the best terms in its use of State funds. Local Agency shall cooperate fully in any such audit, at its own expense, and shall maintain all receipts, accounting, books, invoices, and records pertaining to the work covered under this Agreement for a period of ten years after the work has been performed or the expenses incurred.
22. Local Agency agrees to operate, maintain, and repair its completed levee rehabilitation work pursuant to Water Code Section 12316.
23. Local Agency shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liability for any claims and

damages (including inverse condemnation) that may arise out of this Project and this Agreement, including but not limited to, those arising from the planning, design, construction, maintenance and operation of levee rehabilitation measures on Bacon Island for this Project and any breach of the terms of this Agreement. Local Agency shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement. Local Agency shall also require its contractors to have applicable performance and payment bonding in place before commencing work. The Local Agency's indemnity and related obligations under this Agreement also extend to any similar Department indemnity and related obligations with the U. S. Army Corps of Engineers for emergency assistance, response and rehabilitation of Local Agency's facilities and the Local Agency hereby expressly assumes those obligations.

24. No waiver or breach of this Agreement shall be held to be a waiver of any other or subsequent breach, and no excuse of any condition or covenant shall be held to be an excuse of any other condition or covenant or of the same conditions or covenant at a subsequent time.
25. Statutory provisions of Delta Levees Flood Control Program found at Water Code Sections 12300 through 12318 are incorporated herein by this reference.
26. Local Agency shall be responsible for keeping informed of and complying with all applicable federal, State, and local laws and regulations, and for similarly requiring same of its contractors, including but not limited to those laws and regulations specifically cited, referenced, or incorporated into its Agreement. Without limiting the foregoing sentence, Local Agency and its contractors shall be responsible for all environmental compliance for levee rehabilitation or other work under this Agreement along with any required mitigation for such work pursuant to Water Code Section 12314.
27. Work that is subject to CEQA shall not proceed under this Agreement until documents that satisfy the CEQA process are received by the Department and the Department has completed its CEQA determination as a Responsible Agency. Work that is subject to a CEQA document shall not proceed until and unless concurred with by the Department. Such concurrence is fully discretionary and shall constitute a condition precedent to any such work for which it is required. Once CEQA documentation has been completed, the Department will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations, or other mitigation.
28. The Local Agency shall prepare the environmental documents under CEQA and submit to the Department for evaluation. Costs related to the preparation of

CEQA documentation completed prior to commencement of work may be eligible for reimbursement.

29. Local Agency shall apply for federal disaster assistance whenever eligible.
30. Pursuant to Water Code Section 12316(g), Local Agency shall use subsidence control alternatives, where appropriate, to reduce long-term maintenance and improvement costs.
31. In the event any provision in this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. This Agreement may be amended by the mutual consent of the parties hereto.
32. The Department may, in addition to any other remedy available to it, terminate this Agreement and be relieved of any payment obligations should Local Agency fail to perform this Agreement at the time and in the manner herein provided.
33. The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
34. The following Paragraphs shall survive termination of this Agreement:
Paragraphs 2 and 5 through 28.
35. The term of this Agreement shall be effective from the date of the last signature to December 31, 2018.

PROJECT FUNDING AGREEMENT
for Design and Construction of
District Multi-Benefit Project on Bacon Island
Agreement No. BN-15-1.0-SP

page 13 of 13

DEPARTMENT OF
WATER RESOURCES
State of California

By: 

Dave Mraz, Acting Chief
FloodSAFE Environmental Stewardship
and Statewide Resources Office

Date: 12-22-15

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

By: 

Robin E. Brewer, Assistant Chief Counsel

Date: 12/08/15

DEPARTMENT OF FISH AND WILDLIFE
State of California

APPROVED AS TO CONSISTENCY
WITH SB34/AB 360 HABITAT
REQUIREMENTS:

By: 

James Starr, Environmental Program Manager
Delta Levees Habitat Improvement Program

Date: 11/24/15

LOCAL AGENCY
Reclamation District 2028

By: 

Print Name: David A. Forkel

Print Title: Chairman

Date: October 26, 2015

By: 

Print Name: Pamela A. Forbus

Print Title: Assistant Secretary

Date: October 22, 2015

By: _____

Print Name: _____

Print Title: _____

Date: _____

**LOCAL FUNDING AGREEMENT
BETWEEN CONTRA COSTA WATER DISTRICT AND
RECLAMATION DISTRICT NO. 2028 FOR THE
BACON ISLAND LEVEE REHABILITATION PROJECT**

Through this Local Funding Agreement (“Agreement”) among Contra Costa Water District (“CCWD”) and Reclamation District No. 2028 (RD 2028), who may hereafter be collectively referred to as (“Party” or “Parties”), the Parties hereby agree as follows:

- A. WHEREAS, in September 2014, Reclamation District 2028 (RD 2028) submitted a grant proposal for the Bacon Island Levee Rehabilitation Project (Project) in response to the California Department of Water Resources (DWR) 2014 Delta Levees Special Flood Control Projects Program - Project Solicitation Package for Multi-Benefit Projects which was subsequently funded; and
- B. WHEREAS, on December 22, 2015 DWR and RD 2028 entered into a funding agreement, titled Project Funding Agreement for Design and Construction of District Multi-Benefit Project on Bacon Island Agreement No. BN-15-1.0-SP (the “State Agreement”), outlining the terms and conditions for funding the Project, which is attached hereto and incorporated herein as Exhibit A to this Local Funding Agreement. DWR agreed to fund 97% of the total Project cost up to \$10,211,190 (the “State Share”), leaving the remaining 3%, up to \$315,810 (the “Non-state Share”), to be funded by local match; and
- C. WHEREAS, a coalition of seven urban water agencies has entered into an agreement to provide funding for the Non-state Share of the Project. The urban water agencies are: Alameda County Water District, Contra Costa Water District, East Bay Municipal Utility District, San Francisco Public Utilities Commission, Santa Clara Valley Water District, Zone 7 Water Agency, and The Metropolitan Water District of Southern California (collectively referred to as the “Agencies” herein); and
- D. WHEREAS, CCWD will act as the fiscal agent on behalf of the Agencies, and the liaison and administrator of processing the Project invoices from RD 2028 to the Agencies and the distribution of funds from the Agencies to RD 2028 pursuant to this Agreement; and
- E. WHEREAS, the process by which reimbursement requests will be submitted to CCWD, and how CCWD will in turn request reimbursement from the Agencies and disburse the funding from the Agencies to RD 2028, will be governed by this Agreement; and
- F. The State Agreement and this Agreement shall each be fully executed prior to when RD 2028 will be entitled to submit its first reimbursement request to CCWD and before CCWD will in turn be required to disburse the applicable portion of the Non-state Share funding to RD 2028. All expenses eligible for reimbursement per the State Agreement are eligible for reimbursement per this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

AGREEMENT

The recitals set forth above constitute an integral part of this Agreement and are incorporated by this reference as if fully set forth herein.

1. Term

This Agreement will be in effect as long as the State Agreement between RD 2028 and DWR is in effect. Notwithstanding the foregoing, Section 8 of this Agreement shall survive termination, and to the extent applicable to the Agencies those terms in the State Agreement surviving termination.

2. State Grant and Agency Cost-Share

The total cost of the Project is estimated at \$10,527,000. Of the total cost, the State Share of 97%, not to exceed \$10,211,190 will be provided from DWR pursuant to the State Agreement. The Non-State Share of 3%, not to exceed \$315,810 will be provided by the Agencies pursuant to this Agreement. RD 2028 hereby assumes responsibility for any additional costs of the Project in excess of those contained herein unless amended and agreed to in writing by all Parties.

3. Work Plan

RD 2028 will develop and submit a scope of work to DWR and the Agencies consistent with its grant application and the State Agreement. The final scope of work approved by DWR will be made available to the Agencies for review. It is anticipated that the final scope of work will be available for review in the spring of 2017.

RD 2028 will provide the Agencies a copy of the new construction application submitted to PG&E to initiate PG&E's design process. RD 2028 will provide the Agencies with a copy of the encroachment permit issued to PG&E for the reconfiguration of the gas and electrical facilities within the RD 2028's easement upon request.

RD 2028 agrees that review of Project applications, documents, permits, plans and specifications or other Project information by CCWD and the Agencies is for administrative purposes. Such review does not relieve RD 2028 of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project, nor does it expose the Agencies to any liability for RD 2028's actions or failure to act in connection with the Project, as expressly set forth in Sections 4 and 8, below.

4. Terms of State Agreement No. BN-15-1.0-SP

RD 2028 shall at all times be in compliance with the terms of the State Agreement. RD 2028 shall provide to CCWD and the Agencies indemnification and other protections contained in the

State Agreement to the extent that these may exceed the protections contained in Section 8 of this Agreement.

5. Reporting and Invoicing

RD 2028 will submit three invoices to CCWD for reimbursement based on the completion milestones of the Project.

- ❖ Invoice 1: Following the submittal of the new construction application to PG&E to initiate PG&E's design, and the finalization of all environmental documents as required in compliance with the California Environmental Quality Act (CEQA), the first invoice, for 20% of the total Agency cost share, will be sent to CCWD by RD 2028. The final certified CEQA documents will be included with the invoice.
- ❖ Invoice 2: Following the award of the construction contract and issuance of a Notice to Proceed, the second invoice, for 60% of the total Agency cost share, will be sent to CCWD by RD 2028. Final design documents will promptly be made available for review by the Agencies.
- ❖ Invoice 3: Following RD 2028's determination that the Project has reached substantial completion, such that RD 2028 can utilize the Project for its intended use, the third and final invoice will be sent to CCWD by RD 2028. This final invoice will reflect the outstanding portion of the Non-State Share, consistent with the evaluation of project costs in the State Agreement and Section 2 of this Agreement. A report of the construction status will be included with the invoice.

Upon receipt of an invoice from RD 2028, CCWD will submit invoices to each of the Agencies for their respective share of the cost according to the terms of the agreement between the Agencies. CCWD will submit invoices to the Agencies for payment within 30 days of receiving them from RD 2028. In a separate agreement, each Agency has agreed to submit payments to CCWD within 30 days of receipt of an invoice. CCWD will remit payment to RD 2028 within 30 days of receiving payments from the Agencies.

6. Reimbursement of Agency Funding

If RD 2028 fails to implement the project as described in the approved scope of work, the State Agreement, or in accordance with any mutually agreed upon amendment to those agreements, or in accordance with the terms of this Agreement the Agencies will have no further obligation to pay. Likewise, should the State Agreement be terminated for any reason, the Agencies will have no further obligation to pay. If DWR requires reimbursement because DWR determines that the work done has not been satisfactorily performed, the RD will likewise reimburse the Agencies for the portion of funding that has been expended on the unsatisfactory work. In the event it is determined that Agency payments exceed 3% of the total project cost, RD 2028 will, within 60-days of the determination, provide a reimbursement of funds in an amount equal to the excess paid. All reimbursements will be paid to CCWD for distribution to the Agencies.

7. Communication

All communications relating to the Project shall be exchanged between the RD 2028 project manager and alternate and CCWD staff and alternate. The project manager and alternate for RD 2028 are Dave Forkel and Nate Hershey, respectively. The CCWD staff lead and assigned alternate are Marguerite Patil and Maureen Martin.

8. Indemnification

To the extent permitted by law, RD 2028 shall indemnify, defend, and hold harmless CCWD and the Agencies, their officers, agents, and employees, from and against any and all liability for any losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever (including inverse condemnation) arising out of, resulting from, or in any way connected with the Project and CCWD and the Agencies provision of local funding to RD 2028, including but not limited to, those arising from the planning, design, construction, maintenance and operation of levee rehabilitation measures on Bacon Island for this Project and any breach of the terms of this Agreement or the State Agreement. RD 2028 shall require its contractors to name CCWD and Agencies, their officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to funding from this Agreement.

9. Waiver of Claims

RD 2028 hereby waives any and all claims, known or unknown, against the Agencies in connection to, or arising from, this Agreement, except for failure of the Agencies to pay according to the terms of this Agreement.

10. Dispute Resolution

The Parties to this Agreement shall meet promptly to address any dispute that may arise and make a good faith effort to negotiate a resolution. The use by any Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive any Party of, or limit the application of, any other remedy provided by law.

11. Governing Law

This Agreement, its construction, and all work performed under it shall be governed by the laws of the State of California. Venue shall be in the Contra Costa County Superior Court.

12. Severability

If any provision of this Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Agreement shall remain valid and in force and be construed in such a manner so as to affect the original intent of the Parties to the maximum extent possible.

13. Amendment

No amendment of this Agreement shall be valid unless made in writing and signed by the Parties.

14. Third Party Beneficiaries

The Agencies are intended third party beneficiaries of this Agreement. The implementation of the Project will benefit the water supply reliability of the Agencies.

15. Entire Agreement

This Agreement, together with the attachments hereto, including but not limited to the State Agreement, constitutes the complete agreement between the Parties and supersedes any prior written or oral communications between the Parties.

16. Successors and Assigns

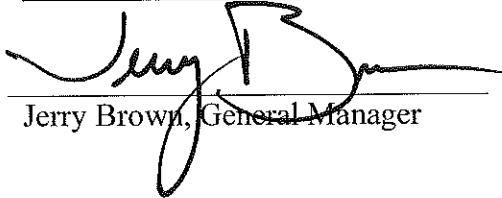
This Agreement and all of its provisions shall apply to and bind the successors and assigns of each and every Party to this Agreement.

17. Counterpart Signatures

This Agreement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.

IN WITNESS THEREOF, this Agreement has been executed by the Parties hereto:

CONTRA COSTA WATER DISTRICT

By: 
Jerry Brown, General Manager

11-9-16
Date

Approved as to Form

By: 
District Legal Counsel

11/16
Date

RECLAMATION DISTRICT 2028

By: _____
Dave Forkel, Chairman

Date

By: _____
Pamela Forbus, Assistant
Secretary

Date

ATTACHMENT D
FUNDING COST SHARE FOR EACH AGENCY

Cost Sharing. Each Agency has agreed to provide funding which will not exceed the amount shown in the Table below.

Agency	Percent of Non-State Cost Share	Percent of Total Project Cost	Cost Share for Project (\$)
ACWD	1.7%	0.051%	\$5,326
CCWD	7.8%	0.235%	\$24,727
MWDSC	77.2%	2.316%	\$243,848
SCVWD	10.1%	0.304%	\$32,018
Zone 7	3.1%	0.094%	\$9,891
EBMUD	NA	NA	In kind services
SFPUC	NA	NA	In kind services
Total	100%	3%	\$315,810

Billing and Payments

RD 2028 will submit three invoices to CCWD for reimbursement based on the completion milestones of the Project. All expenses eligible for reimbursement per the State Agreement are eligible for reimbursement per this LOMU.

Invoice 1: Following the submittal of the new construction application to PG&E to initiate PG&E's design, and the finalization of all environmental documents as required in compliance with the California Environmental Quality Act (CEQA), the first invoice, for 20% of the total Non-State cost share, will be sent to CCWD by RD 2028. CCWD will submit invoices to each Agency for 20% of their total cost share. The final certified CEQA documents will be included with the invoice.

Invoice 2: Following the award of the construction contract and issuance of a Notice to Proceed, the second invoice, for 60% of the Non-State cost share, will be sent to CCWD by RD 2028. CCWD will submit invoices to each Agency for 60% of their total cost share. Final design documents will be made available for review by the Agencies.

Invoice 3: Following RD 2028's determination that the Project has reached substantial completion, such that RD 2028 can utilize the Project for its intended use, the third and final invoice will be sent to CCWD by RD 2028. This final invoice will reflect the outstanding portion of the Non-State Share, consistent with the evaluation of project costs in the State Agreement and Section 2 of the Local Funding Agreement. A report of the construction status will be included with the invoice.

Each Agency may pay an amount greater than the amount billed on an individual invoice up to the full cost share amount; the amount paid in excess of the amount billed will be held by CCWD as a credit on the next billed amount(s). Each Agency agrees to submit payments to CCWD within 30 days of receipt of an invoice. CCWD will remit payment to RD 2028 within 30 days of receiving payments from the Agencies. In the event it is determined that Agency payments exceed 3% of the total project cost, RD 2028 will, within 60-days of the determination, provide a reimbursement of funds in an amount equal to the excess paid. All reimbursements will be paid to CCWD for distribution to the Agencies.