



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 2/7/2012

Report Type: Consent

Title: Agreement: Unionhouse Creek Flood Control Project

Report ID: 2012-00086

Location: Districts 7, 8

Recommendation: Pass a Motion authorizing the City Manager to execute an agreement with the Sacramento Area Flood Control Agency (SAFCA) outlining the roles and responsibilities of the City and SAFCA for the design and construction of the Unionhouse Creek Flood Control Project.

Contact: Bill Busath, Interim Engineering Services Manager, (916) 808-1434, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Engineering Administration

Dept ID: 14001311

Attachments:

- 1- Description/Analysis
- 2 -Background
- 3- Location Map
- 4- Agreement With SAFCA

City Attorney Review

Approved as to Form
Joe Robinson
1/30/2012 5:33:46 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
1/20/2012 2:57:56 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 1/30/2012 2:38:29 PM



Description/Analysis

Issue: The City and the Sacramento Area Flood Control Agency (SAFCA) are proposing to construct Unionhouse Creek flood control improvements from Franklin Boulevard east to the confluence of Unionhouse Creek and Strawberry Creek (the “Project”), to provide a minimum of 100-year flood protection to the adjacent areas and remove most of the residents in the area from the FEMA A99 Flood Zone Designation. SAFCA is proposing to manage the design and construction of the Project, which is estimated to cost \$1,950,000. City and SAFCA staff have developed an agreement (Attachment 1) that defines the roles and responsibilities of each regarding the project.

Policy Considerations: This report’s recommendation is consistent with the City’s Strategic Plan Goals of improving and expanding public safety and achieving sustainability and livability. City Council approval is required for the execution of any agreement entered into by the City.

Environmental Considerations: Approval of the proposed agreement will allow SAFCA to begin design and environmental review for the Project. SAFCA, as the lead agency, will approve the environmental documentation required by the California Environmental Quality Act (CEQA) prior to awarding any contract(s) for construction of the Project.

Sustainability: The project is consistent with the Sustainability Master Plan goal to improve flood protection in the region.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Execution of this agreement will allow SAFCA to enter into a professional services agreement with a design consultant to begin the design on the Project and will outline the roles and responsibilities of the City and SAFCA regarding the Project.

Financial Considerations: The total estimated cost of this project is \$1,950,000. The financial commitments are as follows:

SAFCA will fund the design and CEQA compliance of the project up to \$200,000. If such costs exceed \$200,000, the parties will meet and confer to determine the allocation of such excess costs.

SAFCA has applied for and received a California Department of Water Resources grant pursuant to the Proposition 1E Integrated Regional Water Management (IRWM) Stormwater Flood Management grant program (Grant) to help fund the construction of the Project, in an amount of up to \$976,000. The agreement requires that SAFCA administer this grant and that this money shall be paid to the City to offset Project construction costs that the City will front to SAFCA. The reimbursement shall be made to City within thirty (30) days following receipt of Grant funds by SAFCA.

After the beginning of Fiscal Year 2012/13, the City will front SAFCA’s construction costs up to an amount \$1,750,000, subject to subsequent reimbursement from the Grant funds.

As a result, assuming receipt of the maximum Grant amount of \$976,000, the City's net share of the Project costs will not exceed \$774,000, which amount will be budgeted for the Project in the 2012 - 2017 Capital Improvement Program budget.

Emerging Small Business Development (ESBD): ESBD considerations do not pertain to this agreement.

Background

In 2007- 08, the U.S. Army Corps of Engineers (ACE) constructed a portion of the South Sacramento County Streams Project 1B2, which is part of the larger South Sacramento County Streams Project, consisting of improvements to Unionhouse Creek, from Franklin Boulevard to the confluence with Morrison Creek, to provide 100-year flood protection to areas of the City adjacent to such Levee. The rest of the planned improvements to Unionhouse Creek, east of Franklin Boulevard were not completed; as a result, areas of the City adjacent to Unionhouse Creek east of Franklin Boulevard have less than 100-year flood protection.

The City and SAFCA are proposing to construct Unionhouse Creek flood control improvements from Franklin Boulevard east to the confluence of Unionhouse Creek and Strawberry Creek (the “Project”), to provide a minimum of 100-year flood protection to the areas of the City of Sacramento along both banks of Unionhouse Creek and remove most of the residents of the area from the FEMA A 99 flood zone designation in which they currently reside.

SAFCA will design and construct the Project, consisting of channel widening from Franklin Boulevard eastward to Center Parkway, and concrete lining from Center Parkway eastward to the confluence of Strawberry and Unionhouse Creek, for a total estimated Project cost of \$1.95 million.

SAFCA is proposing to fund the design, CEQA compliance and bidding for the Project, up to an amount of \$200,000.

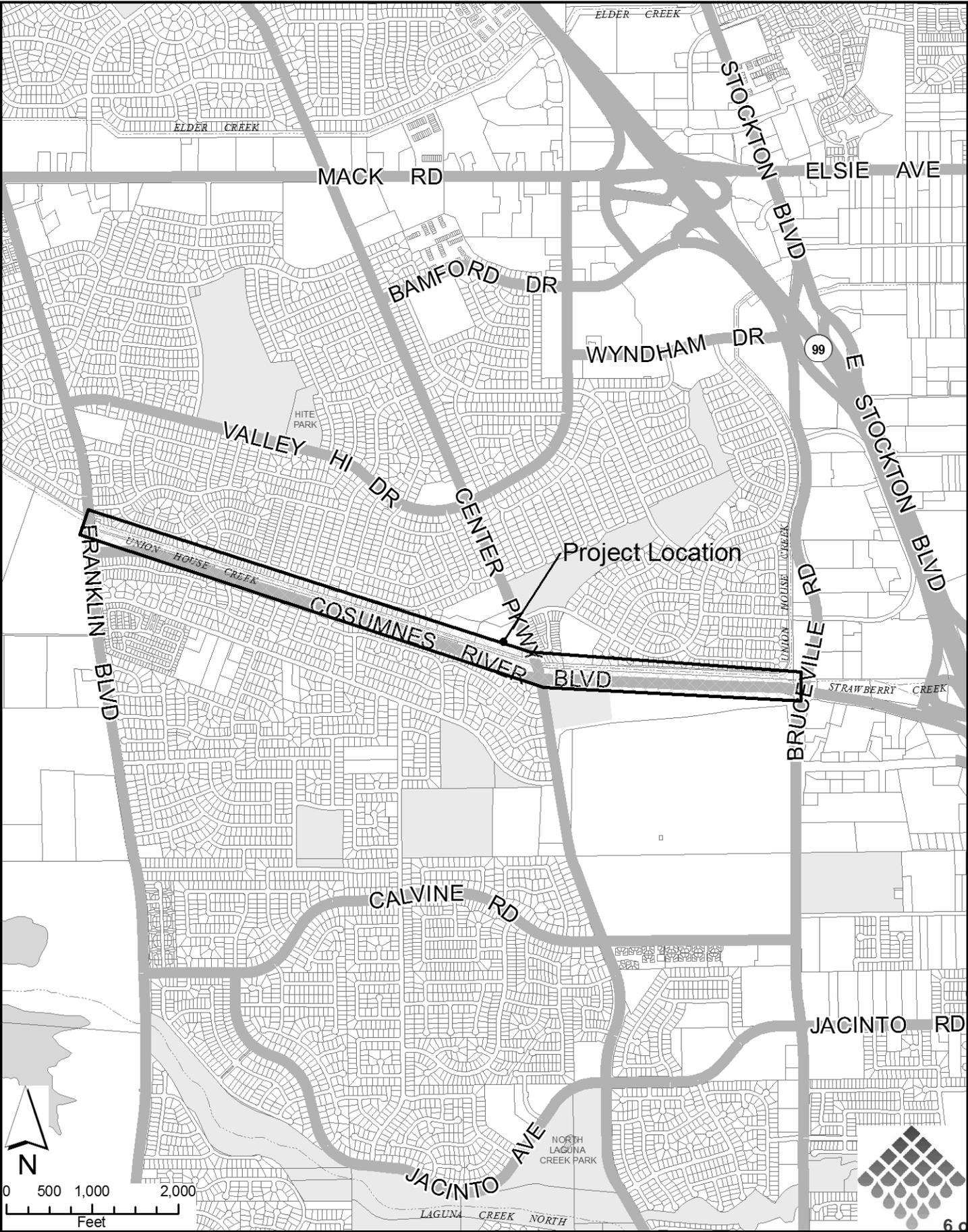
The City will be responsible for the cost of the construction contract, SAFCA’s construction contract management, and any environmental or other mitigation required for Project construction. The City will front the funding for these costs to SAFCA, prior to SAFCA’s award of the construction contract (which will not occur until late July, 2012, or later), in an amount not-to-exceed \$1,750,000.

SAFCA also has applied for and received a California Department of Water Resources grant pursuant to Proposition 1E Integrated Regional Water Management (IRWM) Stormwater Flood Management grant program (Grant), to help fund the construction of the Project, in an amount of up to \$976,000. This money will be paid to the City to offset the Project construction costs that the City fronts to SAFCA. Assuming receipt by SAFCA of the maximum Grant amount, the reimbursement will result in the City’s funding share of the Project not exceeding \$774,000.

The parties have set forth their understanding and agreement as to the roles and responsibilities of each party with respect to the Project in the agreement attached as Attachment 1.

LOCATION MAP

Unionhouse Creek Flood Control Improvements





**AGREEMENT FOR COST SHARING
AND PROVISION OF SERVICES
UNIONHOUSE CREEK CHANNEL IMPROVEMENTS**

This Agreement is made and entered into on _____, 2012, by and between the **City of Sacramento**, a charter city (“City”), and the **Sacramento Area Flood Control Agency**, a joint powers agency (“SAFCA”)

RECITALS

WHEREAS, in 2007- 08 , the U.S. Army Corps of Engineers (ACE) constructed a portion of the South Sacramento County Streams Project 1B2, which is part of the larger South Sacramento County Streams Project, consisting of improvements to Unionhouse Creek, from Franklin Boulevard to the confluence with Morrison Creek to provide 100-year flood protection to areas of the City adjacent to such Levee. The rest of the planned improvements to Unionhouse Creek, east of Franklin Boulevard were not completed at this time, ; as a result, areas of the City adjacent to Unionhouse Creek east of Franklin Boulevard have less than 100-year flood protection; and

WHEREAS, the City and SAFCA are proposing to construct Unionhouse Creek flood control improvements from Franklin Boulevard east to the confluence of Unionhouse Creek and Strawberry Creek (“Project”) to provide a minimum of 100-year flood protection to the areas of the City of Sacramento along both banks of Unionhouse Creek; and

WHEREAS , SAFCA is proposing to design and construct the portion of the Project consisting of channel widening from Franklin Boulevard eastward to Center Parkway and concrete lining from Center Parkway eastward to the confluence of Strawberry and Unionhouse Creek (“SAFCA Channel Improvements”) for a total estimated cost of \$1.95 million; and

WHEREAS, the parties desire to set forth their understanding and agreement as to the roles and responsibilities of each party with respect to the SAFCA Channel Improvements.

AGREEMENT

NOW, THEREFORE, THE PARTIES agree as follows:

1. SAFCA’s Obligations.

A. SAFCA agrees to perform and provide for the following services in furtherance of the SAFCA Channel Improvements at no cost to the City, except as provided below:

(i) Retain the consultants necessary to plan, engineer, design and prepare the plans and specifications sufficient to bid the SAFCA Channel Improvements, and obtain all of the permits and approvals necessary to construct the SAFCA channel improvements, including any necessary environmental permits and approvals. These plans, specifications, permits and approvals shall be subject to review and acceptance by the City. City shall have three (3) weeks from receipt of the draft plans and specifications to review and provide comments on the plans and specifications to SAFCA. City shall have two (2) weeks from receipt of the final plans and specifications to review and accept the plans and specifications, or provide further comments if warranted.

(ii) Put the SAFCA Channel Improvements out for public bidding, consistent with the Public Contracts Code, award a public works construction contract or contracts for the SAFCA Channel Improvements to the lowest responsible bidder, and manage the construction of the SAFCA Channel Improvements to completion in accordance with the plans and specifications. If the contract amount causes the total estimated cost of the SAFCA Channel Improvements to exceed \$1.95 million, City approval of the contract amount, and the parties' written agreement for the allocation of such excess costs, shall be required prior to SAFCA's award of the construction contract or contracts. SAFCA shall not put the SAFCA Channel Improvements out for bid until SAFCA provides to City written confirmation from the California Department of Water Resources that SAFCA has received the Grant described in Section 3, below.

(iii) SAFCA shall pay the costs to perform the services specified in subsections (i) and (ii), above (not including the costs of the construction contract or contracts, construction contract management, and environmental or other mitigation required for construction of the SAFCA Channel Improvements), which the parties anticipate will not exceed \$200,000. If such costs exceed \$200,000, the parties will meet and confer to determine the allocation of such excess costs, if any.

(iv) SAFCA shall perform the services described above pursuant to the schedule set forth in Exhibit A, attached hereto and incorporated herein by this reference.

(v) SAFCA shall require the contractor(s) to stockpile and/or dispose of the excavated materials from Franklin Boulevard to Center Parkway, as directed by the City.

2. City's Obligations.

A. Subject to the Grant reimbursement described in Section 3, below, City agrees to fund SAFCA's costs for the construction contract or contracts, construction contract management, and environmental or other mitigation required for the SAFCA Channel Improvements, currently estimated to be \$1.75 million, as set forth below:

(i) Prior to SAFCA's award of the construction contract(s), City shall provide to SAFCA funds in an amount equal to SAFCA's estimated cost for the construction contract or contracts, construction contract management, and environmental or other mitigation of the SAFCA Channel Improvements, not to exceed a maximum payment of \$1.75 million, unless the parties agree in writing to increase this amount. SAFCA will not award the construction contract(s) until late July 2012, or later. SAFCA shall provide City with an invoice no later than sixty (60) days prior to the anticipated award of the construction contract(s).

(ii) SAFCA shall return any unexpended funds to City not later than sixty (60) days after the SAFCA Channel Improvements are accepted as complete by SAFCA and the City.

B. City shall provide SAFCA and its contractors the necessary rights of entry or other real property interests sufficient for SAFCA and its contractors to enter onto City property to analyze, evaluate and construct the SAFCA Channel Improvements.

C. Any excavated materials from Franklin Boulevard to Center Parkway stockpiled at the direction of the City shall be City property that City shall dispose of at its sole discretion.

3. Grant. SAFCA has applied for a California Department of Water Resources grant pursuant to Proposition 1E Integrated Regional Water Management (IRWM) Stormwater Flood Management grant program (Grant) to help fund the construction of the SAFCA Channel Improvements in an amount of \$976,000.

A. SAFCA shall administer the Grant.

B. All Grant funds received by SAFCA shall be used to reimburse the City for the City's costs to fund construction the SAFCA Channel Improvements. The reimbursement shall be made to City within thirty (30) days following receipt of Grant funds by SAFCA.

4. Term of Agreement. This Agreement shall remain in effect until the SAFCA Channel Improvements are constructed as evidenced by acceptance of

the completed SAFCA Channel Improvements by the SAFCA Board of Directors and the City, and all reimbursements provided for under Section 3, above, have been made. Any provisions of this Agreement capable of performance after the expiration of such term shall survive and not be affected by the expiration of such term.

5. Financial Records. The parties shall retain all financial records, including, but not limited to, documents, reports, books and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement, or until audited, whichever occurs first, or for any such longer period of time as may be required to comply with the terms of any grant that funds any portion of the Project. Staff of City or SAFCA or any duly authorized representative of City or SAFCA shall, with reasonable notice, have access to and the right to examine, audit and copy such records.

6. Notices. Any notices, invoices, payments and other communications under this Agreement shall be given by delivering the same in writing to the parties at the addresses below:

To City:

Dave Brent, Director
Department of Utilities
1395 35th Avenue
Sacramento, CA 95822
Telephone: (916) 808-1400

To SAFCA:

Richard M. Johnson, Executive Director
SAFCA
1007 7th St 7th Floor
Sacramento, CA 95814

A party may change the designation indicated above by written notice to the other parties in accordance with this Section.

7. Independent Contractor.

A. It is understood and agreed that the SAFCA, including any consultants or contractors retained by the SAFCA pursuant to Section 1.A., above, are independent contractors and that no relationship of employer-employee exists between the parties. Neither such consultants nor contractors, nor any person employed by the SAFCA, shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or

withholdings from the reimbursement payable to the SAFCA under the provisions of this Agreement, and SAFCA hereby agrees to defend and indemnify City against, and hold City harmless from, any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

B. If, in the performance of this Agreement, any third parties are employed by the SAFCA, such persons shall be entirely and exclusively under the direction, supervision, and control of the SAFCA. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by the SAFCA.

C. It is further understood and agreed that neither the SAFCA nor the SAFCA's assigned personnel shall have any entitlement as a City employee, or any right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligation whatsoever.

8. Indemnification.

A. The City, by execution of this Agreement, specifically agrees to hold harmless, defend and indemnify SAFCA, its officials, officers, agents and employees from and against any and all actions, claims, loss, liability, damage and expense (including reasonable attorney fees), but only to the extent caused by any negligent or willful act or omission of the City, its officers or employees in connection with performance of the City's obligations under this Agreement.

B. SAFCA, by execution of this Agreement, specifically agrees to hold harmless, defend and indemnify the City, its officials, officers, agents and employees from and against any and all actions, claims, loss, liability, damage and expense (including reasonable attorney fees), but only to the extent caused by any negligent or willful act or omission of SAFCA, its officers or employees, or of SAFCA's consultants, contractors or subcontractors or their respective officers and employees, in connection with performance of the SAFCA's obligations under this Agreement. In addition, SAFCA's agreements with any consultants and contractors performing any aspect of the design or construction for the SAFCA Channel Improvements shall require such consultants and contractors to agree to hold harmless, defend and indemnify the City, its officers, agents and employees, and name the City, its officers, agents and employees as additional insureds, to the same extent that such agreements require this for SAFCA, its officers and employees.

9. Amendments. Modifications or amendments to the terms of this Agreement shall be in writing and executed by all parties.

10. Successors and Waivers. This Agreement shall bind the successors of SAFCA and City in the same manner as if they were expressly named. Waiver by any party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right under this Agreement.

11. Parties to Agreement. The City and SAFCA are the only parties o this Agreement. The member entities that make up SAFCA are not parties and are not liable for any SAFCA obligation set forth in this Agreement, nor are such member entities third party beneficiaries of any provision of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between SAFCA and the City concerning the subject matter of this Agreement and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first written above.

SACRAMENTO AREA FLOOD CONTROL AGENCY,
a joint powers agency

CITY OF SACRAMENTO,
a charter city

By _____
RICHARD M. JOHNSON,
Executive Director

By _____
City Manager
(or Authorized Designee)

Attest:

City Clerk

APPROVED AS TO FORM:

By: _____
M. HOLLY GILCHRIST
Agency Counsel

By: _____
Joe Robinson
Deputy City Attorney

EXHIBIT A
SAFCA SCHEDULE OF PERFORMANCE

<u>TASK</u>	<u>DATE</u> ¹
Contract with consultant team For design, engineering and environmental Compliance	January 19, 2011
Submit plans to City of review	
Receipt of approved plans from City (2 weeks after submission)	
Construction contract out for bid	
Bid opening	
Award of bids	
Commencement of Construction	July 2012
Completion of Construction	

¹ All dates are estimates subject to change with approval of the City and SAFCA.