

**Meeting Date:** 3/26/2013

**Report Type:** Consent

**Report ID:** 2013-00220

**Title: Agreement: Cost-Sharing on the Unionhouse Creek Improvement Project**

**Location:** District 7, 8

**Issue:** : Authorization of the proposed agreement will allow the City to recover Regional Transit's pro-rata share of work performed on the Unionhouse Creek flood improvements (a SAFCA Project).

**Recommendation:** 1) Pass a Motion authorizing the City Manager or the City Manager's designee to sign an agreement between the City, the Sacramento Area Flood Control Agency (SAFCA), and the Sacramento Regional Transit District (RT) for cost sharing on the project, and 2) Pass a Resolution authorizing the City Manager or the City Manager's designee to establish a reimbursement fund in the Drainage Channel Improvement Program (W14130400) to account for RT's payment to the City of RT's cost share under the agreement in the amount of \$522,996.

**Contact:** Bill Busath, Engineering Manager, (916) 808-1434; Brett Grant, Supervising Engineer, (916) 808-1413, 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-Resolution

5-Exhibit A (Agreement)

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#### City Attorney Review

Approved as to Form

Joe Robinson

3/18/2013 6:08:21 PM

#### City Treasurer Review

Reviewed for Impact on Cash and Debt

Janelle Gray

3/13/2013 9:15:02 AM

#### Approvals/Acknowledgements

~~Department Director or Designee:~~ Dave Brent - 3/15/2013 12:40:14 PM



## Description/Analysis

**Issue:** The Sacramento Regional Transit District (RT) has agreed to pay the City a prorata share of certain Unionhouse Creek Flood Control Project costs that benefit RT's South Sacramento Corridor Phase 2 Extension project. The Flood Control Project was jointly funded by Sacramento Area Flood Control Agency (SAFCA) and the City. This agreement provides for RT to reimburse the City for their share of the costs in the amount of \$522,996.

**Policy Considerations:** This report's recommendation is consistent with the City's General Plan goals of improving and expanding public safety and achieving sustainability and livability.

**Economic Impacts:** None

**Environmental Considerations:** SAFCA is constructing the Project and, as lead agency under the California Environmental Quality Act (CEQA), adopted a mitigated negative declaration and mitigation reporting program for the Project. The City's Community Services Department, Environmental Planning Division reviewed the proposed cost-sharing agreement with SAFCA and RT, and determined that this activity is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3). Approval of the cost-sharing agreement is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Sustainability:** This proposed cost-sharing agreement 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 and adoption of the resolution will allow the Department of Utilities (DOU) to invoice RT and accept RT's corresponding payment to reimburse expenses charged to the Drainage Channel Improvement Program (W14130400).

**Financial Considerations:** Staff recommends that within the revenue and expenditure budget for the City's Drainage Channel Improvement Program (W14130400), a reimbursable fund 6211 be established, and the total budget be amended by \$522,996 to recognize the prorata share of costs to be paid by RT.

**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 consisted of work on Unionhouse Creek west of Franklin Blvd. The 1B2 Project was part of the larger South Sacramento County Streams Project to provide 100-year flood protection. The ACE did not complete planned improvements to Unionhouse Creek east of Franklin Boulevard, so the City and SAFCA entered into City Agreement No. 2012-0162 to construct flood control improvements along Unionhouse Creek from Franklin Blvd. east to Bruceville Road (the “SAFCA Project”).

The City and SAFCA approved an amendment to Agreement No. 2012-0162, dated December 6, 2012, to revise the funding allocations for the City and SAFCA after bids for construction of the SAFCA Project came in significantly higher than expected.

The Project is managed by SAFCA, and the City’s share of the funding is budgeted in the Drainage Channel Improvement Program (W14130400). SAFCA obtained a State Department of Water Resources Prop 1E Grant to partially fund the Project. The majority of the Project construction is complete, except for some no-cost punchlist corrections to be made this spring.

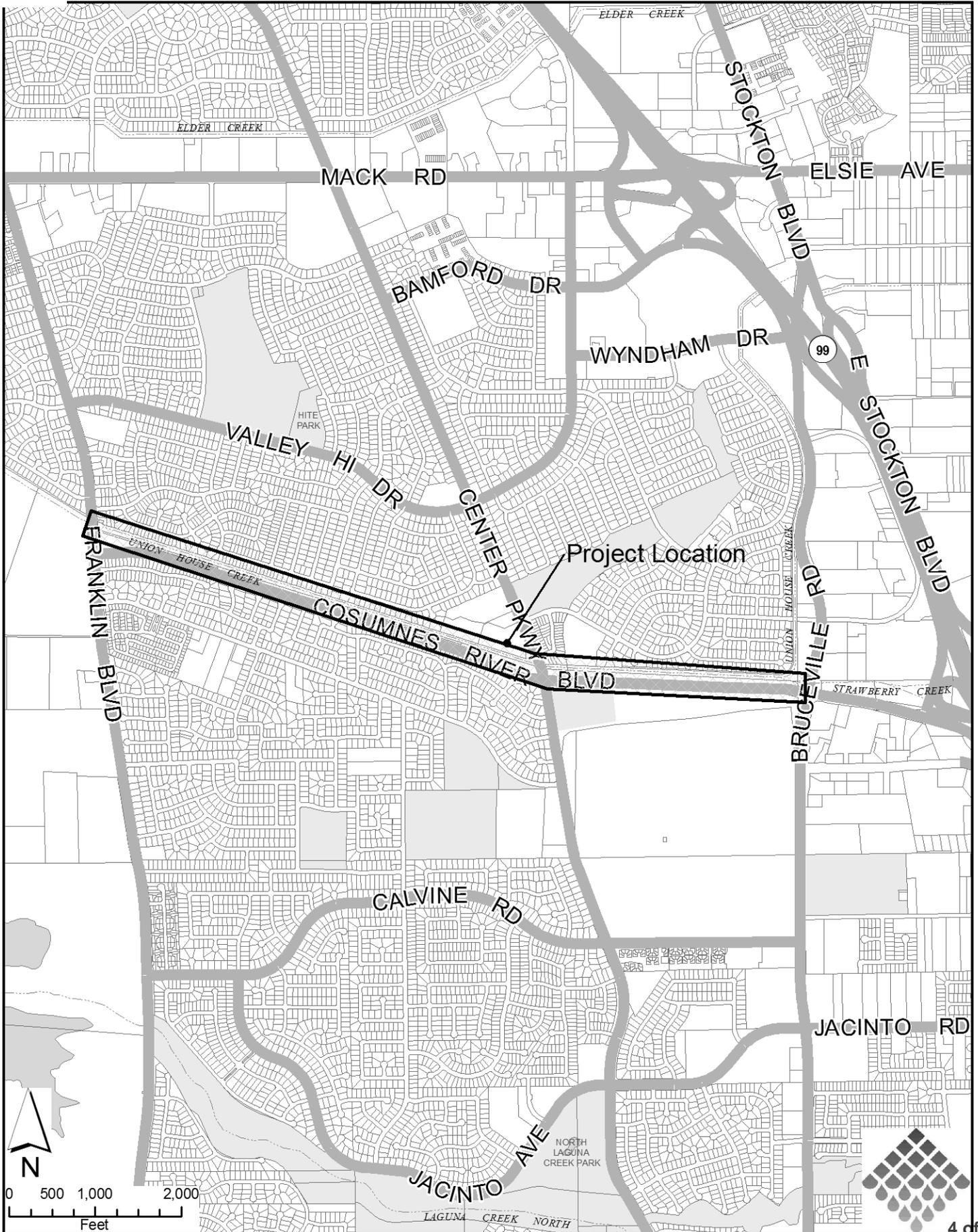
The SAFCA Project alignment is parallel and adjacent to RT’s planned South Sacramento Corridor Phase 2 Extension (SC2) alignment. RT has already started work on SC2, and agreed to accept excavated material from the SAFCA Project for their rail line embankments. RT recognized improved slope stability benefits to their rail line embankments from gunite lining applied to the south side Unionhouse Creek channel bank as part of the SAFCA Project. RT and DOU both recognized the expediency and added benefit of upsizing a planned stormdrain line into Sump 201, consistent with DOU’s masterplan for the area, as part of the SAFCA Project.

Staff from DOU, RT, and SAFCA have developed an agreement allowing RT to reimburse DOU a prorata share of some joint-benefit construction items. Once this cost share agreement is fully executed, the amount to be paid by RT will be used to reimburse costs incurred by the Drainage Channel Improvement Program (W14130400).



# LOCATION MAP

## Unionhouse Creek Flood Control Improvements





## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **AUTHORIZING BUDGET REIMBURSEMENT FOR THE DRAINAGE CHANNEL IMPROVEMENT PROGRAM**

#### **BACKGROUND**

- A. The City and the Sacramento Area Flood Control Agency (SAFCA) entered into City Agreement No. 2012-0162, dated February 22, 2012, to fund and construct Unionhouse Creek flood control improvements (the “Project”) between Franklin Boulevard and Bruceville Road. The City and SAFCA approved an amendment to Agreement No. 2012-0162, dated December 6, 2012, to revise the funding allocations for City and SAFCA after bids for construction of the Project came in significantly higher than expected.
- B. The Sacramento Regional Transit District (RT) was not a party to Agreement No. 2012-0162, but has agreed to provide funding for a prorata share of certain Project costs that benefit RT’s South Sacramento Corridor Phase 2 Extension project.
- C. City, SAFCA, and RT staff have developed an agreement that provides for cost-sharing by RT, and defines the roles and responsibilities of each party.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager or City Manager’s designee is authorized to establish a reimbursement fund (6211) in the Drainage Channel Improvement Program (W14130400) to account for RT’s payment to City of RT’s cost-share in the amount of \$522,996.



**AGREEMENT FOR COST SHARING ON THE  
UNIONHOUSE CREEK IMPROVEMENT PROJECT  
(SAFCA Project NO. 4144)**

This Agreement is made and entered into on \_\_\_\_\_, 2013, by and between the **City of Sacramento**, a charter city (“City”), the **Sacramento Regional Transit District**, a public corporation (“RT”), and the **Sacramento Area Flood Control Agency**, a joint powers agency (“SAFCA”).

**RECITALS**

- A. As part of RT’s Blue Line to Cosumnes River College, referred to as the South Sacramento Corridor Phase 2 project (the “SSCP2 Project”), RT is proposing to build a 4.3 mile extension of its light rail system from Meadowview Road south along the Union Pacific Railroad corridor to Morrison Creek, turning easterly and then generally parallel to Cosumnes River Boulevard to Bruceville Road, and turning south to end at Cosumnes River College in South Sacramento.
- B. On February 22, 2012, City and SAFCA entered into that certain “Agreement for Cost Sharing and Provision of Services Unionhouse Creek Channel Improvements,” as amended by the First Amendment to such agreement on December 6, 2012 (the “City-SAFCA Agreement”), which, among other things, requires SAFCA to bid and award a construction contract to construct improvements to Unionhouse Creek from Franklin Boulevard to east of the confluence of Unionhouse Creek and Strawberry Creek in South Sacramento (the “SAFCA Channel Improvement Project”).
- C. As part of the SAFCA Channel Improvement Project, SAFCA’s contractor will apply shotcrete lining to the Unionhouse Creek sideslopes between Center Parkway and Bruceville Road so as to prevent sideslope erosion. The SSCP2 Project will be located near the south top of bank of Unionhouse Creek for much of the distance between Center Parkway and Bruceville Road.
- D. Because Unionhouse Creek sideslope erosion would have an adverse effect on stability of the parallel SSCP2 Project improvements, the shotcrete lining of Unionhouse Creek will benefit the SSCP2 Project. In recognition of this benefit, RT is sharing in the cost of the SAFCA Channel Improvement Project measures to prevent sideslope erosion, as provided herein.
- E. As part of the SAFCA Channel Improvement Project, SAFCA’s contractor will widen the Unionhouse Creek Channel between Franklin Boulevard and Center Parkway (the “SAFCA Channel Widening Zone”). The City-SAFCA Agreement provides that SAFCA will require its contractor to stockpile and/or dispose of soil excavated by the contractor as directed by the City. RT is willing to accept material excavated by SAFCA’s contractor for the channel widening (the “excavated material”) for RT’s use as track embankment material for the SSCP2 Project between Franklin Boulevard and Center Parkway, so long as the excavated material, after testing for hazardous and/or unsuitable content, is found to be suitable for RT’s needs, as provided herein.

- F. As part of the channel widening work, the wetwell and outlets from City Sump 201, located on the south bank of Unionhouse Creek within the SAFCA Channel Widening Zone, are scheduled to be relocated to the south by SAFCA's contractor. Relocation would involve exposing part of the existing 18" diameter reinforced concrete pipe stormdrain (the "RCP") into Sump 201.
- G. The SSCP2 Project includes track placement above the RCP, and connection of track underdrains to the RCP. For stormdrains under RT tracks, the City requires casing around the stormdrain or replacement of the stormdrain with maintenance-free pipe, and the City requires stormdrain connections to be made at manholes. The City also has determined that the existing 18" RCP into Sump 201 is undersized.
- H. City and RT desire to avoid re-exposing the Sump 201 wetwell and RCP as part of the SSCP2 Project soon after it is scheduled to be worked on as part of the SAFCA Channel Improvement Project in order for RT to install a new underdrain connection manhole and an enlarged maintenance-free stormdrain under RT's tracks.
- I. City and SAFCA are willing to require installation of a new underdrain connection manhole and an enlarged maintenance-free stormdrain under RT's tracks to be performed as part of the SAFCA Channel Improvement Project, as provided herein.

### **AGREEMENT**

NOW, THEREFORE, THE PARTIES agree as follows:

1. RT's Obligations.

- A. It is estimated that SAFCA's contractor will excavate approximately 21,000 cubic yards of excavated material from the SAFCA Channel Widening Zone. After testing the excavated material and determining that it is suitable and free from contaminants, RT will allow the excavated material to be disposed of on property owned or controlled by RT along the SSCP2 Project alignment between Franklin Boulevard and Center Parkway. The specific locations for disposal and the route(s) of access to such location(s) will be designated by RT, and will be subject to written approval by SAFCA's representative identified in Section 6 below, or their authorized designee, which approval will not be unreasonably withheld.
- B. RT will provide SAFCA's contractor such ingress and egress as is necessary for the contractor to deliver the excavated material as provided herein.
- C. Before the excavated material may be delivered and accepted by RT, RT will test the excavated material to determine whether it is free of contamination and suitable for Track Embankment for its SSCP2 Project. If the excavated material is found to be unsuitable and/or contaminated RT will reject the material and will not accept delivery of the excavated material. If after testing RT determines that the excavated material is suitable and free of

contamination, RT will accept the excavated material as provided herein and the excavated material will be RT's property and RT will use or dispose of such excavated material at its sole discretion. The City and SAFCA will have no responsibility to test or remediate any excavated material delivered to and accepted by RT under this Agreement.

- D. RT will reimburse the City for RT's prorata share of costs for work performed as part of the SAFCA Channel Improvement Project and paid for by City under the City-SAFCA Agreement, as shown on Exhibit 1. Exhibit 1 includes contracted unit costs and as-built quantities for the cost-shared items based on the bid amounts in the SAFCA Channel Improvement Project contract, except for the costs to add a new underdrain connection manhole and replace approximately 40 lineal feet of existing stormdrain into Sump 201 with enlarged maintenance-free HDPE pipe. The costs shown in Exhibit 1 for this latter work are based on negotiation of added work between SAFCA and its contractor. RT will reimburse the City for the actual costs of the items of work listed in Exhibit 1 and for the added work that was negotiated, based on the prorated RT Share shown on Exhibit 1. RT shall reimburse City within 45 days after receipt of City's invoice(s) for these items.

## 2. City's Obligations.

- A. City will invoice RT for completed reimbursable item quantities determined by SAFCA's inspection representative based on the cost share allocations in Exhibit 1. City's invoice will identify the amount of work completed for the period covered by the invoice, with payment due calculated based on actual SAFCA Channel Improvement Project contract costs.
- B. At Sump 201, City will provide plans and directions for a new underdrain connection manhole to serve RT and approximately 40 lineal feet of enlarged maintenance-free HDPE stormdrain under RT's new tracks to be installed as part of the SAFCA Channel Improvement Project and/or by City personnel, in accordance with plans and specifications approved in writing by City and RT.

## 3. SAFCA's Obligations.

- A. SAFCA will provide RT and its contractors with reasonable access to the excavated material to facilitate testing of the excavated material by RT.
- B. SAFCA will direct SAFCA's contractor to deliver the excavated material to the location(s) designated by RT and approved by SAFCA, as specified in section 1(A) above.
- C. SAFCA will require SAFCA's contractor to name RT, its officers, agents and employees as additional insureds under the contractor's general liability and automobile liability policies to the same extent that SAFCA is named as an additional insured for any work performed on the SAFCA Channel Improvement Project.

- D. SAFCA agrees that SAFCA's contractor will be an independent contractor, and that SAFCA will defend and indemnify RT against, and hold RT harmless from, any and all claims that may be made against RT based upon any contention by any third party that an employer-employee relationship exists between RT and SAFCA's contractor by reason of this Agreement.
- E. SAFCA will be responsible for performing environmental review in accordance with the California Environmental Quality Act for the SAFCA Channel Improvement Project as the lead agency for the project.

4. Term of Agreement. This Agreement shall remain in effect until terminated by mutual written agreement of the parties.

5. Financial Records. The parties must retain all financial records, including, but not limited to, documents, reports, books and accounting records that pertain to any delivery of, or invoicing and payment for SAFCA Channel Improvement Project contract items pursuant to this Agreement for four (4) years after the end of the term specified in Section 4 above, 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 SSCP2 Project or the SAFCA Channel Improvements. Staff of City, RT or SAFCA, or any duly authorized representative of City, RT 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, or other communications under this Agreement must be given by delivery in writing to the parties at the addresses below:

<p><b><u>To City:</u></b>          Dave Brent,          Director of Utilities          1395 35<sup>th</sup> Ave          Sacramento, CA 95822          Phone: 916.808.1400</p>	<p><b><u>To RT:</u></b>          Michael R. Wiley          General Manager/CEO          1400 29th Street          Sacramento, CA 95816          Phone: 916.321.2800</p>	<p><b><u>To SAFCA</u></b>          Richard M. Johnson          Executive Director          1007 7<sup>th</sup> St., 7<sup>th</sup> Floor          Sacramento, CA 95814          Phone: 916.874.7606</p>
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A party may change the designation indicated above by written notice to the other parties in accordance with this Section.

7. Indemnification.

- A. **By City:** The City, by execution of this Agreement, agrees to hold harmless, defend and indemnify RT and SAFCA, and their respective officials, officers, agents and employees from and against any and all actions, claims, loss, liability, fines, penalties, damages, and expense (including reasonable attorney fees), 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. **By RT:** RT, by execution of this Agreement, agrees to hold harmless, defend and indemnify the City and SAFCA, and their respective officials, officers,

agents and employees from and against any and all actions, claims, loss, liability, fines, penalties, damages, and expense (including reasonable attorney fees), to the extent caused by any negligent or willful act or omission of RT, its officers or employees in connection with performance of the RT's obligations under this Agreement.

- C. **By SAFCA:** SAFCA, by execution of this Agreement, agrees to hold harmless, defend and indemnify the City and RT, and their respective officials, officers, agents and employees from and against any and all actions, claims, loss, liability, fines, penalties, damages, and expense (including reasonable attorney fees), to the extent caused by any negligent or willful act or omission of SAFCA, its officers or employees, or of SAFCA's contractors or subcontractors or their respective officers and employees, in connection with performance of the obligations of SAFCA or of SAFCA's contractors or subcontractors under this Agreement.

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

9. Successors and Waivers. This Agreement will bind the successors of RT, City, and SAFCA 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.

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

11. Relationship Between the Parties. Nothing in this Agreement is intended to create, and nothing herein will be considered as creating, any partnership, joint venture, or agency relationship between the parties. No party will have authority, express or implied, to act on behalf of any other party in any capacity whatsoever as an agent, nor to bind any other party to any obligation whatsoever. In performing any work or services under this Agreement, the officers, employees and agents of each party shall be solely the officers, employees and agents of that party and shall not be considered officers, employees or agents of any other party for any purpose whatsoever.

12. Entire Agreement. This Agreement constitutes the entire agreement between RT, City and SAFCA 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.

13. Existing Agreements. Notwithstanding any other provision of this Agreement:

- A. This Agreement shall not modify, amend or affect in any way that certain "South Sacramento Corridor Phase II Project Light Rail Project Agreement" between the RT and the City, dated March 12, 2012 (the "Project Agreement"), and in the event of any conflict or inconsistency between this Agreement and the Project Agreement, the Project Agreement shall govern.

B. This Agreement shall not modify, amend or affect in any way the City-SAFCA Agreement, and in the event of any conflict or inconsistency between this Agreement and the City-SAFCA Agreement, the City-SAFCA Agreement shall govern.

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

**SACRAMENTO REGIONAL  
TRANSIT DISTRICT**

**CITY OF SACRAMENTO**

By: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager  
(or Authorized Designee)

**SACRAMENTO AREA FLOOD  
CONTROL AGENCY**

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_ By: \_\_\_\_\_ By: \_\_\_\_\_  
RT Counsel City Attorney SAFCA Counsel

Exhibit 1  
 Cost Sharing Prorata  
 Unionhouse Creek Improvement Project Items

Description	Quantity	Units	Unit Cost	Extended Amount	RT's Share	RT's Costs
Mob/Demob/& Builders Risk Ins.	1	LS	\$260,000	\$260,000	25%	\$65,000
4" Sideslope Gunite Lining (Cntr to Brcvl)	14,914.3	SY	\$45.00	\$671,144	50%	\$335,572
Temporary Drainage Diversion System	1	LS	\$400,000	\$400,000	25%	\$100,000
Clearing and Grubbing	1	LS	\$58,000	\$58,000	25%	\$14,500
Install Replacement 40 lf HDPE SD under RT @ Sump 201 and add new MH connection	1	LS	\$31,695	\$31,695	25%	\$7,924
			Sum:	<b>\$1,420,839</b>		<b>\$522,996</b>