

Meeting Date: 8/12/2014

Report Type: Review

Report ID: 2014-00548

Title: (Agreement/Contract for Review and Information) Agreement with Sacramento Area Flood Control Agency (SAFCA) for Cost Sharing on the Florin Creek Detention Basin Project

Location: District 8

Recommendation: 1) Review a report requesting the City Council, after considering the project's environmental effects as shown in the mitigated negative declaration adopted by the SAFCA, to authorize the City Manager or the City Manager's designee to sign an agreement between the City and SAFCA for cost sharing on the Florin Creek Detention Basin project; and 2) continue to August 19, 2014 for consideration.

Contact: Bill Busath, Engineering & Water Resources Manager, (916) 808-1434; Tony Bertrand, Supervising Engineer, (916) 808-1461, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Development Services

Dept ID: 14001341

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A - Cost Sharing Agreement Florin Creek Project
- 4-Exhibit B - Florin Creek Detention Basin Location

City Attorney Review

Approved as to Form
Joe Robinson
7/29/2014 5:07:44 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 7/28/2014 2:20:33 PM

Description/Analysis

Issue Detail: The Department of Utilities (DOU) is partnering with the Sacramento Area Flood Control Agency (SAFCA) to design and build a flood detention basin adjacent to and north of Florin Creek. This project, coupled with the U.S. Army Corps of Engineers (USACE) improvements on Florin Creek, will provide increased flood protection to most of the City residents in the south area by removing their properties from the A99 flood zone that they currently are in. The agreement calls for DOU and SAFCA to share the remaining cost of the basin project not funded by a grant from the State of California Department of Water Resources (CA DWR).

Policy Considerations: This agreement was approved by the SAFCA Board on April 17, 2014 and 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), prepared and adopted the mitigated negative declaration and mitigation reporting program for the project included with this report. The City is acting as a responsible agency under CEQA Guidelines Section 15096, which requires the City to review the mitigated negative declaration prepared by SAFCA and consider the environmental effects of the project, prior to approving the cost-sharing agreement. Upon review, City staff believes that SAFCA's mitigated negative declaration adequately evaluates the environmental effects of the project.

Sustainability: This proposed cost-sharing agreement is consistent with the Sustainability Master Plan goal to improve flood protection in the region.

Commission/Committee Action: None.

Rationale for Recommendation: SAFCA is proposing to design, bid, and construct the project, with the City funding up to \$1,000,000 for the costs of implementing the improvements. Execution of this agreement will fund the City's share of basin project costs over a four year period.

Financial Considerations: This agreement obligates the City to pay one-fourth of the overall cost of the project in an amount not-to-exceed \$1,000,000. Three payments of \$250,000 will be made during FY2014/15 and FY2015/16; payment one will occur upon authorization of the agreement, payment two prior to June 1, 2015, and payment three prior to June 1, 2016. One payment of \$250,000 or less will be made in FY2016/17 depending upon participation of the County of Sacramento in the cost sharing and the overall cost of the project. There are currently enough funds in the Florin Creek Detention Basin Project (W14130405) for the first two installments. Funds for the last two installments will be budgeted as needed.

Local Business Enterprise (LBE): City of Sacramento LBE program requirements are not incorporated into contracts that are bid independent of the City.

Background

From 2005 through 2013 the U.S. Army Corps of Engineers (USACE) has constructed portions of the federally authorized South Sacramento County Streams Project, including improvements to portions of Florin Creek downstream of Franklin Boulevard. The USACE plans to construct improvements to Florin Creek from Franklin Boulevard to US Highway 99 consisting of channel widening, channel lining, and minor floodwall construction. The proposed improvements by the USACE will still leave some City and County of Sacramento residents within the Federal Emergency Management Agency (FEMA) 100-year floodplain. The City and SAFCA are proposing to construct the Florin Creek Multi-Use Basin Project to provide a minimum of 100-year flood protection to the areas of the City and County along both banks of Florin Creek upstream to US Highway 99. SAFCA is proposing to design and construct the portion of the Basin Project consisting of creating a detention basin at Southgate Recreation and Park District's Florin Creek Park site.

The Basin Project is located within unincorporated Sacramento County. However, most of the 450 structures that would be removed from the regulatory floodplain as a combined result of the Basin Project and the Federal Project are within the City of Sacramento limits downstream of the Basin Project. The total estimated cost of the Basin Project is approximately \$3.9 million. Of this amount, approximately \$1.9 million will be paid for by a State of California Department of Water Resources (CA DWR) Stormwater Flood Management Grant obtained by SAFCA. SAFCA and City staff have developed an agreement for the City to share a portion of the approximately \$2 million local cost share of the Basin Project. Under a cost-share agreement the City would fund one quarter (1/4) of the Basin Project cost, not to exceed \$1 million unless the agreement is amended. SAFCA would be responsible for the remainder of approximately \$1 million. As a combined result of the Basin Project and the Federal Project, approximately seven percent of the structures that would be removed from the regulatory floodplain are within unincorporated Sacramento County (County). Therefore, SAFCA staff is working with the County to cover a portion of the local share of the Basin Project. SAFCA staff expects the cost share agreement with the County would cover about \$70,000 of the Basin Project cost.

City would fund up to \$1,000,000 for the costs of implementing the SAFCA Basin Project, with the City to provide to SAFCA funds in an amount of (1) \$250,000 upon authorization of the agreement, (2) \$250,000 on or before June 1, 2015, (3) \$250,000 on or before June 1, 2016, and (4) \$250,000 on or before June 1, 2017. If the overall cost of the SAFCA Basin Project is less than \$4 million then the FY 2016/17 payment will be reduced to make the overall cumulative City contribution equal one-fourth of the

overall cost of the Project. If the County of Sacramento contributes funds toward the SAFCA Basin Improvements, the required City funding of one-fourth of the overall cost of the Project shall be further reduced in an amount equal to the amount of the County funding. There are currently enough funds in the Florin Creek Detention Basin Project (W14130405) for the first two installments. Funds for the last two installments will be budgeted as needed.

DOU staff recommends this cost-sharing agreement to allow the Department of Utilities (DOU) to fund the City's share of Basin Project costs over a four year period, to enable the Florin Creek Basin Project to be constructed, and to increase the safety of south area City residents by increasing the level of flood protection provided.

**AGREEMENT FOR COST SHARING ON THE
FLORIN CREEK MULTI-USE BASIN PROJECT
(SAFCA Contract No. _____)**

This Agreement is made and entered into on _____, 2014 by and between the **City of Sacramento**, a charter city (“City”), and the **Sacramento Area Flood Control Agency**, a joint powers authority (“SAFCA”).

RECITALS

WHEREAS, from 2005 through 2013 the U.S. Army Corps of Engineers (USACE) has constructed portions of the federally authorized South Sacramento Streams Group Project, including improvements to portions of Florin Creek downstream of Franklin Boulevard; and

WHEREAS, the USACE plans to construct improvements to Florin Creek from Franklin Boulevard to La Mancha Way (US Highway 99) and these improvements consist of channel widening, channel lining, and minor floodwall construction; and

WHEREAS, the proposed improvements by the USACE will still leave some City and County of Sacramento (County) residents in the FEMA 100-year floodplain; and

WHEREAS, the City and SAFCA are proposing to construct the Florin Creek Multi-Use Basin Project (“Project”) to provide a minimum of 100-year flood protection to the areas of the City and County along both banks of Florin Creek; and

WHEREAS, SAFCA is proposing to design and construct the portion of the Project consisting of creating a detention basin at Southgate Recreation and Park District’s Florin Creek Park site ("SAFCA Basin Improvements") for a total estimated cost of Three Million Eight Hundred Twenty Thousand Dollars (\$3.82 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 Basin 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 Basin Improvements:

(i) Retain the consultants necessary to plan, engineer, design, and prepare the plans and specifications sufficient to bid the SAFCA Basin Improvements, and obtain all of the permits

and approvals necessary to construct the SAFCA Basin Improvements, including any necessary environmental permits and approvals. These plans and specifications shall be subject to review and acceptance by the City. City shall have two (2) 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 Basin Improvements out for public bidding, consistent with the Public Contracts Code, award a public works construction contract or contracts for the SAFCA Basin Improvements to the lowest responsible bidder, and manage the construction of the SAFCA Basin Improvements to completion in accordance with the plans and specifications. If the contract amount causes the total estimated cost of the SAFCA Basin Improvements to exceed \$3.82 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 Basin 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. After the contract is awarded, any change order that increases the contract amount by more than \$25,000 shall be provided to the City Director of Utilities for review and comment prior to SAFCA approval. The parties agree that any construction contract change orders approved by SAFCA shall be funded by remaining Grant Funds pursuant to Section 3 below. If the amount of construction change orders approved by SAFCA increases the total project cost in excess of \$4.0 million, City and SAFCA shall split the balance of this amount equally, provided that the City's maximum funding amount of \$1 million specified in Section 2(A), below, shall not be increased unless the City and SAFCA agree to amend this Agreement to reflect the increased cost and cost-sharing. City shall pay its portion of this amount with its last scheduled payment.

(iii) SAFCA shall pay the cost to perform the services specified in subsections (i) and (ii), above (including the costs of the plans and specifications, bidding, the construction contract or contracts, construction contract management, and environmental or other mitigation required for construction of the SAFCA Basin Improvements).

(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.

2. City's Obligations.

A. Subject to SAFCA's performance of the obligations above, City agrees to fund up to

One Million Dollars (\$1,000,000) for the costs of implementing the SAFCA Basin Improvements, currently estimated to be \$3.82 million, as set forth below:

(i) City shall provide to SAFCA funds in an amount of (1) Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2014, (2) Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2015, (3) Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2016, and (4) Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2017. If the overall cost of the SAFCA Basin Improvements is less than Four Million Dollars (\$4.00 million) then the FY 2016/17 payment shall be reduced to make the overall cumulative City contribution equal one-fourth of the overall cost of the Project. If the County of Sacramento contributes funds toward the SAFCA Basin Improvements, the required City funding of one-fourth of the overall cost of the Project shall be further reduced in an amount equal to the amount of the County funding. The required City funding of \$1 million or one-fourth of the overall cost of the Project, whichever is less, less the amount of the County funding, if any, is referred to hereafter as the "City Funding Amount". The City is allowed to accelerate payments if the City desires to make payments ahead of the scheduled listed above.

(ii) At any time after the SAFCA Basin Improvements are accepted as complete by SAFCA, the City, and Southgate Recreation and Park District, if the City has contributed funds greater than the City Funding Amount, SAFCA shall return any City funding in excess of the City Funding Amount to City.

B. The City agrees to submit a Letter of Map Revision (LOMR) application to the Federal Emergency Management Agency to reflect the SAFCA Basin Improvements and the USACE's Florin Creek Project within sixty days following the date the SAFCA Basin Improvements and the USACE's Florin Creek Project are accepted as complete.

3. Grant SAFCA has received a California Department of Water Resources Proposition 1E Stormwater Flood Management grant (Grant) to help fund the construction of the SAFCA Basin Improvements in an amount of \$1,909,910.

A. SAFCA shall administer the Grant.

B. All Grant funds received by SAFCA shall be used toward the cost of implementing SAFCA Basin Improvements. If the total cost of the SAFCA Basin Improvements are projected to exceed \$4.00 million or if the bid from the lowest responsive and responsible bidder causes the total

cost of the SAFCA Basin Improvements to exceed \$4.00 million, the SAFCA Basin Improvements contract will not be awarded unless City and SAFCA agree to amend this Agreement to reflect the increased cost and cost-sharing; if City and SAFCA do not agree to amend this Agreement and the total Project cost remains more than \$4.00 million, SAFCA will return to City any funds previously paid to SAFCA by City and this Agreement will terminate.

4. Term of Agreement. Unless terminated as provided in Section 3.B, above, or by mutual written agreement of the parties, this Agreement shall remain in effect until the SAFCA Basin Improvements are constructed as evidenced by acceptance of the completed SAFCA Basin Improvements by the SAFCA Board of Directors, the City, and the Southgate Recreation and Park District, and all payments or reimbursements provided for in this Agreement 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 by mail or personal delivery to the parties at the addresses below:

To **City:**

Dave Brent, Director

Department of Utilities, City of Sacramento

1395 35th Avenue

Sacramento, CA 95822

Telephone: (916) 808-1400

To SAFCA:

Richard M. Johnson

Executive Director, SAFCA

1007 7th Street, 7th floor

Sacramento, CA 95814

Telephone: (916) 874-7606

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 Basin 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. This Agreement may not be assigned without the written consent of the non-assigning party.

11. Parties to Agreement. The City and SAFCA are the only parties to 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:

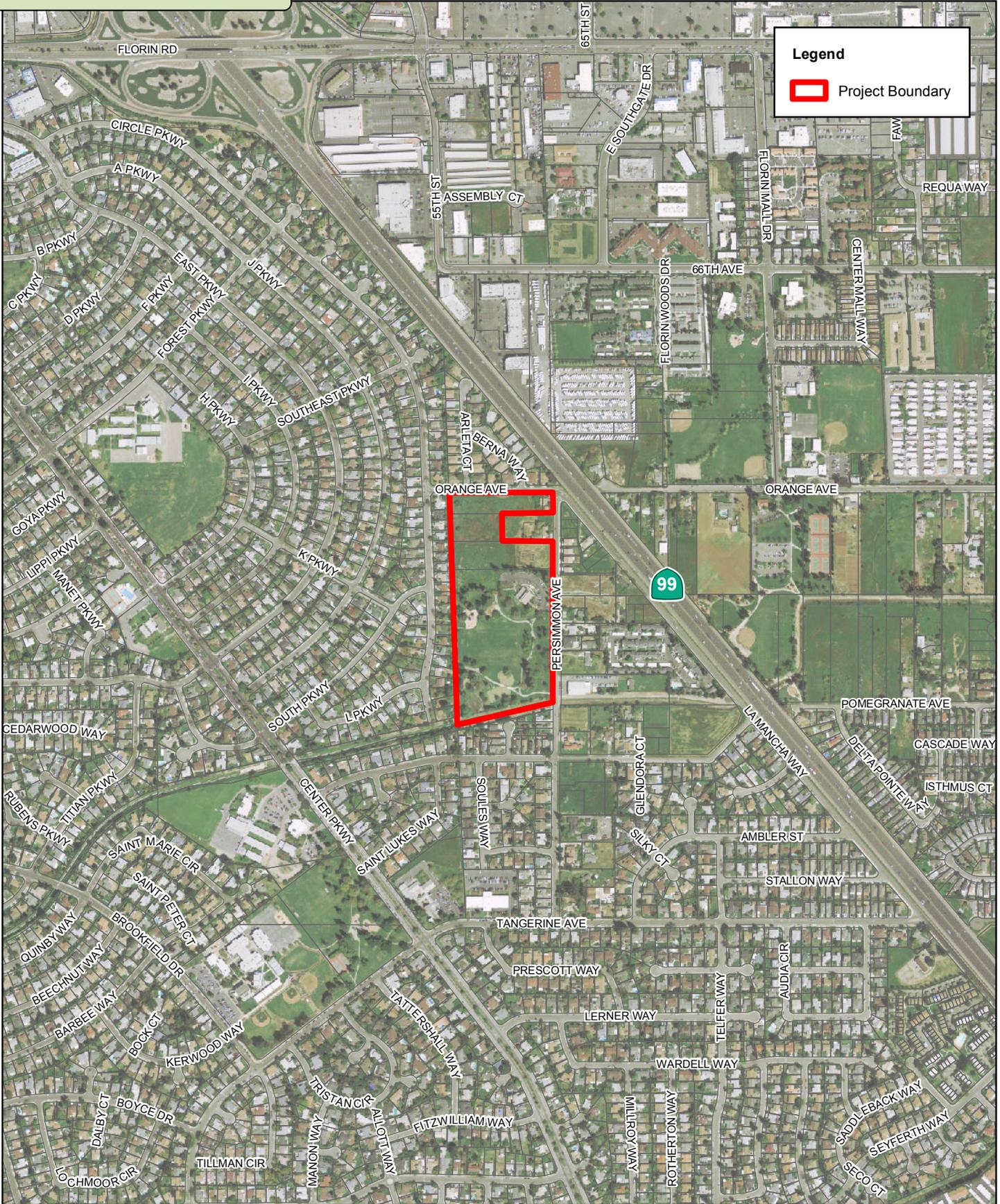
City Clerk

APPROVED AS TO FORM:

By _____
M. HOLLY GILCHRIST
Agency Counsel

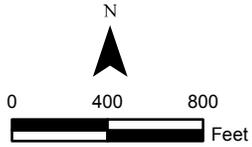
By _____
JOE ROBINSON
Deputy City Attorney

EXHIBIT A



Legend

 Project Boundary



Florin Creek Detention Basin Project