

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR CONSTRUCTION OF THE
AMERICAN RIVER WATERSHED, CALIFORNIA
(FOLSOM DAM MODIFICATIONS)

THIS AMENDMENT is entered into this 24 day of AUGUST, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the Acting Assistant Secretary of the Army (Civil Works), and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency (hereinafter "SAFCA"), represented by its Executive Director (the State and SAFCA when referred to collectively are referred to hereinafter as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California was authorized by Section 101(a)(6) of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, the Government, the State (represented by the Reclamation Board), and SAFCA entered into a Project Cooperation Agreement for construction of the authorized features on March 30, 2004 (hereinafter the "Agreement");

WHEREAS, Section 128(a) of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, directed the Secretary of the Army and the Secretary of the Interior to consider reasonable modifications including a potential auxiliary spillway;

WHEREAS, the authorization was modified by Section 3029(b) of the Water Resources Development Act of 2007, Public Law 110-114, which authorized the Secretary of the Army to construct an auxiliary spillway as described in the Post Authorization Change Report, American River Watershed Project (Folsom Dam Modification and Folsom Dam Raise Projects), dated March 2007;

WHEREAS, pursuant to California Water Code, Section 8550, all duties and corresponding funding, together with all necessary positions, of the Reclamation Board were transferred to the

Central Valley Flood Protection Board as it was reconstituted effective January 1, 2008;

WHEREAS, the Government, the State (represented by the Central Valley Flood Protection Board), and SAFCA desire to amend the Agreement to construct the authorized auxiliary spillway;

WHEREAS, Section 3029(a) of the Water Resources Development Act of 2007, Public Law 110-114, modifies the project for flood control and recreation, Sacramento and American Rivers, California (Natomas Levee features), authorized by section 9159 of the Department of Defense Appropriations Act, 1993 (106 Stat. 1944), to direct the Secretary to credit \$20,503,000 to SAFCA for the nonreimbursed Federal share of costs incurred by SAFCA in connection with the Natomas Levee features, for allocation to such projects as are requested by SAFCA; and

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, including coordination of project implementation in the Central Valley of California in order to maximize the usefulness of funds committed by the legislature and people of California, together with Federal appropriations, to reduce flood risk, and to create an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsors, and facilitate the successful implementation of the Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to amend the Agreement as follows:

1. ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

Article I.A. is amended by replacing the existing definition with the following:

“The term “Project” shall mean the Corps of Engineers’ work package portion of the auxiliary spillway, including construction of an auxiliary spillway, consisting of an approach channel, a control structure with six submerged tainter flood gates, a spillway chute, and a stilling basin, as generally described in the American River Watershed Project (Folsom Dam Modifications and Folsom Dam Raise Projects), California, Post Authorization Change Report dated March 2007, approved in accordance with the Record of Decision signed by the Assistant Secretary of the Army (Civil Works) and by the Mid-Pacific Regional Director, Bureau of Reclamation in May 2007; and additionally, all planning, design and construction activities covered by this Agreement that were completed prior to the effective date of Amendment No. 1 to this Agreement.

2. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

a. Article II.A.3. is amended by replacing the total project cost amount of “\$199,100,000” with

"\$836,800,000".

b. Article II.C. is amended by adding at the end thereof: ", and any subsequent amendments thereto."

c. Article II. is further amended by adding at the end thereof:

"L. The Non-Federal Sponsors shall prevent obstructions or encroachments (including prescribing and enforcing regulations to prevent such obstructions or encroachments) on any Project lands, easements, or rights-of-way that are provided by the Non-Federal Sponsors pursuant to this Agreement, or that are otherwise under their control. Such obstructions and encroachments include any new construction which may affect the level of protection the Project affords, or hinder operation and maintenance of the Project, or interfere with the Project's authorized function."

3. ARTICLE VI -- METHOD OF PAYMENT

a. Article VI.A is amended by replacing the projected total project cost of "\$199,100,000" with "\$836,800,000"; and by replacing the projected State's contribution of "\$69,685,000" with "\$292,900,000".

b. Article VI.B. is amended by replacing the existing provisions with the following:

"B. The State shall provide the contributions of funds required by Article II.D.1., Article II.D.3., and Article XVIII.C. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the Project or commencement of construction of the Project using the Government's own forces, the Government shall notify the State in writing of such scheduled date and the funds the Government determines to be required from the State to meet: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; (b) the projected non-Federal proportionate share of financial obligations for construction to be incurred in the first quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected non-Federal proportionate share of financial obligations for construction through the first quarter; and (c) the State's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement to be incurred in the first quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the State's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement through the first quarter. Not later than such scheduled date, the State shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer, or verifying to the satisfaction of the Government that the State has deposited such required funds in an escrow

or other account acceptable to the Government, with interest accruing to the State, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of the Project is complete, the Government shall notify the State in writing of the funds the Government determines to be required from the State, and the State shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for construction of the Project or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement, the Government shall notify the State in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the State to meet: (a) the projected non-Federal proportionate share of financial obligations for construction for that quarter for such continuing contract and (b) the State's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement for that quarter for such continuing contract. No later than 30 calendar days prior to the beginning of that quarter, the State shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract for the Project where the Government will not use a continuing contract to make financial obligations for construction or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement, the Government shall notify the State in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the State to meet: (a) the projected non-Federal proportionate share of financial obligations for construction to be incurred for such contract and (b) the State's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement to be incurred for such contract. No later than such scheduled date, the State shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make financial obligations for construction of the Project using the Government's own forces or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement using the Government's own forces, the Government shall notify the State in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the State to meet: (a) the projected non-Federal proportionate share of financial obligations for construction using the Government's own forces for that quarter and (b) the State's share of the projected financial obligations for data recovery activities associated with

historic preservation pursuant to Article XVIII.C. of this Agreement using the Government's own forces for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the State shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; (b) the non-Federal proportionate share of financial obligations for construction as financial obligations for construction are incurred; and (c) the State's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.C. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the State to cover the State's share of such financial obligations in the current quarter, the Government shall notify the State in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the State shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

4. SAFCA may, at the State's request, make up to the full amount of the required funds for any quarter available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The preceding sentence shall not be construed to affect in any way the obligations of the State to make full payment to the Government in accordance with this Agreement."

4. ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

Article VIII.A is amended by adding at the end thereof: ", and any subsequent amendments thereto."

5. ARTICLE X—MAINTENANCE OF RECORDS AND AUDIT

a. Article X.B. is amended by replacing "Single Audit Act of 1984" with "Single Audit Act Amendments of 1996".

b. Article X.C. is amended by replacing "Single Audit Act" with "Single Audit Act Amendments of 1996".

6. ARTICLE XIX—SECTION 902 PROJECT COST LIMITS

Article XIX is amended by replacing the estimated amount of "\$207,735,000" with "\$977,941,000"; and by replacing the date "October 1, 2003" with "October 1, 2008".

7. New Article XXI is added to read as follows:

"ARTICLE XXI—THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement."

8. New Article XXII is added to read as follows:

"ARTICLE XXII—AMENDMENTS

This Agreement may be further amended to include provisions to provide credit, in accordance with Army guidance, toward the non-Federal share of the cost of the Project, as provided for in Section 3029(a) of the Water Resources Development Act of 2007, Public Law 110-114, for the nonreimbursed Federal share of costs incurred by SAFCA in connection with the project for flood control and recreation, Sacramento and American Rivers, California (Natomas Levee features), authorized by section 9159 of the Department of Defense Appropriations Act, 1993 (106 Stat. 1944). In no event, shall the Government afford such credit prior to further amendment of this Agreement. "

9. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this amendment to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

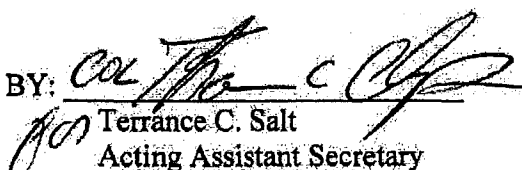
THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA

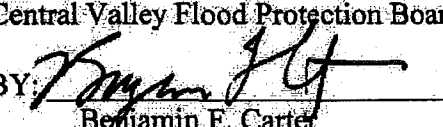
Represented by the

Central Valley Flood Protection Board

BY:


Terrance C. Salt
Acting Assistant Secretary
of the Army (Civil Works)

BY:


Benjamin F. Carter
President
Central Valley Flood Protection Board

DATE:

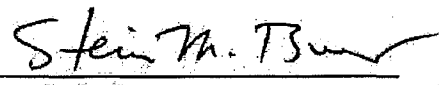
24 Aug 09

DATE:

JULY 30, 2009

SACRAMENTO AREA FLOOD CONTROL AGENCY

BY:


Stein Buer
Executive Director

DATE:

8/21/2009

CERTIFICATE OF AUTHORITY

I, Nancy Finch, do hereby certify that I am the principal legal officer of the Central Valley Flood Protection Board, State of California ("Central Valley Flood Protection Board"), that the Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 1 to the Agreement between the Department of the Army and the State of California and the Sacramento Area Flood Control Agency, in connection with the American River Watershed, California (Folsom Dam Modifications) project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. (1962d-5b)), and that the persons who have executed this Agreement on behalf of the State of California as represented by the Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
17th day of August 20 09.

Nancy Finch
Nancy Finch
Counsel for the
Central Valley Flood Protection Board
State of California

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

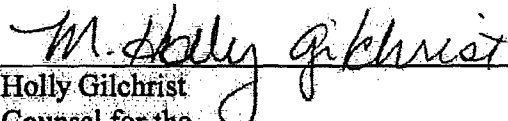

Benjamin F. Carter
President
Central Valley Flood Protection Board
State of California

DATE: JULY 30, 2009

CERTIFICATE OF AUTHORITY

I, Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency ("SAFCA"), that SAFCA is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 1 to the Agreement between the Department of the Army and the State of California and SAFCA, in connection with the American River Watershed, California (Folsom Dam Modifications) project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. (1962d-5b), and that the persons who have executed this Agreement on behalf of SAFCA have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
21 day of August 2009.



Holly Gilchrist
Counsel for the
Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

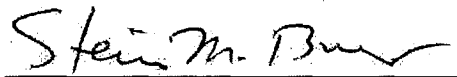
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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Stein Buer
Executive Director
Sacramento Area Flood Control Agency

DATE: 8/21/09