

AMENDMENT NUMBER 2
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 Number 2 is entered into this 21st day of June, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District, 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 as modified by Section 128(a) of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103 and Section 3029 of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Government, the State, and SAFCA entered into a Project Cooperation Agreement for construction of the authorized features on March 30, 2004;

WHEREAS, the Government and the Non-Federal Sponsors entered into Amendment Number 1 to the 2004 Project Cooperation Agreement on August 24, 2009 to construct the authorized auxiliary spillway;

WHEREAS, Section 9159 of the Department of Defense Appropriations Act, 1993, Public Law (106 Stat. 1944; hereinafter "Section 9159"), authorized the Sacramento and American Rivers, California (Natomas Levee features) project for flood control and recreation, and authorized the Secretary to reimburse the non-Federal sponsor (SAFCA) for the costs of the non-Federal work performed consistent with the 1992 feasibility report "American River Watershed Investigation", including any reevaluations of the report, and through fiscal year 2005 the Government has reimbursed SAFCA \$16,625,000;

WHEREAS, Section 3029(a) of the Water Resources Development Act of 2007, Public Law 110-114 (hereinafter "Section 3029(a)"), modified the Sacramento and American Rivers, California (Natomas Levee features) project for flood control and recreation, authorized by Section 9159, 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 and to allocate such credit to the non-Federal share of projects as requested by SAFCA;

WHEREAS, in fiscal year 2009 the Government reimbursed an additional \$4,100,000 to SAFCA pursuant to Section 9159; and

WHEREAS, SAFCA has requested that the Government credit toward the Non-Federal Sponsors' contribution of funds required for the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, \$16,119,000 (the remaining nonreimbursed Federal share of costs incurred by SAFCA in connection with the Natomas levee features) pursuant to Section 9159 as modified by Section 3029(a).

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to further amend the previously amended 2004 Project Cooperation Agreement (hereinafter the "Agreement") to afford credit for the remaining nonreimbursed Federal share of costs incurred by SAFCA in connection with the Natomas levee features as follows:

1. ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

The definition of "non-Federal proportionate share" in Article I.D. is amended by replacing the existing provision with the following:

"D. The term "non-Federal proportionate share" shall mean the ratio of the State's cash contribution required in accordance with Article II.D.1. of this Agreement and the amount of funds determined in accordance with Article II.D.3.a. of this Agreement to total financial obligations for construction, as projected by the Government. "

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

a. Article II.D.1. is amended by replacing the existing provision with the following:

"1. The State shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement. None of the credit to be afforded pursuant to paragraph M. of this Article may be used to fulfill this requirement."

b. Article II.D.3. is amended by replacing the existing provision with the following:

"3. The State shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the State's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this

Agreement will be less than 35 percent of total project costs, the Government shall determine the amount of funds that would be necessary to make the State's total contribution equal to 35 percent of total project costs. This determination shall be made prior to the Government affording credit pursuant to paragraph M. of this Article.

b. The State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount determined in accordance with paragraph D.3.a. of this Article reduced by the amount of credit the Government affords pursuant to paragraph M. of this Article."

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

"M. The Government shall afford a credit in the amount of \$16,119,000 toward the amount of funds determined in accordance with paragraph D.3.a. of this Article. The credit may be afforded as a single sum or in increments in accordance with a crediting plan to be agreed upon by the District Engineer and the Non-Federal Sponsors. The crediting plan is to be developed within 90 days after the execution of this Amendment Number 2. The District Engineer and Non-Federal Sponsors may revise the crediting plan as appropriate. The crediting plan shall specify the contract or contracts toward which the full credit or portion of the credit will be applied in reducing the funds to be provided by the State under Article VI.B. of this Agreement. If one or more of the contracts is 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, then the crediting plan shall also specify the quarter or quarters in which the full credit or portion of the credit will be afforded."

3. Article VI - METHOD OF PAYMENT

a. Article VI.B.2.a. is amended by inserting the phrase ", after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement," after "of the funds the Government determines to be required from the State" and before "to meet:".

b. Article VI.B.2.b. is amended by inserting the phrase ", after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement," after "of the funds the Government determines to be required from the State" and before "to meet:".

c. Article VI.B.2.c. is amended by inserting the phrase ", after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement," after "of the funds the Government determines to be required from the State" and before "to meet:".

4. Article XXII is amended by replacing the existing provision with the following:

"ARTICLE XXII—ACKNOWLEDGEMENT AND RELEASE"

SAFCA acknowledges that at its request the Government is affording a credit in the amount of \$16,119,000 pursuant to Article II.M. of this Agreement toward the required non-

Federal cash contribution for the Project required by Article II.D.3.b. of this Agreement, in fulfillment of the Government's obligation under Section 9159 of the Department of Defense Appropriations Act, 1993 (106 Stat. 1944), as modified by Section 3029(a) of the Water Resources Development Act of 2007, Public Law 110-114, to reimburse or credit to SAFCA the 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). In consideration for the Government's affording such credit, SAFCA releases the Government from all further obligation to reimburse or afford credit to SAFCA under Section 9159 of the Department of Defense Appropriations Act, 1993, as modified by Section 3029(a) of the Water Resources Development Act of 2007."

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

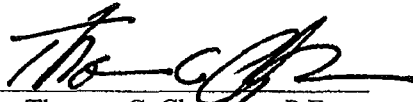
IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 2 to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA

Represented by the

Central Valley Flood Protection Board

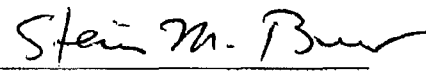
BY: 
Thomas C. Chapman, P.E.
Colonel, U.S. Army
District Engineer

BY: 
Jay Punia
Executive Officer
Central Valley Flood Protection Board

DATE: 21 Jun 10

DATE: 5/11/2010

SACRAMENTO AREA FLOOD CONTROL AGENCY

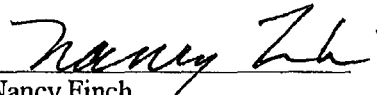
BY: 
Stein M. Buer
Executive Director

DATE: 5/7/10

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 2 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
12th day of May 20 10.


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.



Jay Punia
Executive Officer
Central Valley Flood Protection Board
State of California

DATE: 5/11/2010

CERTIFICATE OF AUTHORITY

I, M. 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
7th day of May 20 10.

M. Holly Gilchrist
M. 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.

(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.



Stein M. Buer
Executive Director
Sacramento Area Flood Control Agency

DATE: 5/7/10



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

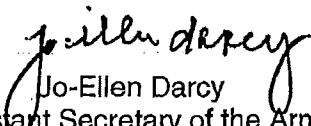
APR 28 2010

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Amendment No. 2 to the Project Cooperation Agreement for the American River Watershed (Folsom Dam Modifications) Project, California

This responds to a memorandum from the Chief of the South Pacific Division Regional Integration Team dated April 5, 2010, requesting approval of subject draft amendment. The draft amendment is approved.

Authority to sign the final amendment on behalf of the Department of the Army is hereby delegated to the district commander.


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 8/03)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 8 Pages

AGREEMENT NUMBER

4600003463

REGISTRATION NUMBER

AMENDMENT NUMBER

2

1. This Agreement is entered into between the State Agency and Contractor named below:

STATE AGENCY'S NAME

Department of Water Resources

CONTRACTOR'S NAME

U.S. Army Corps of Engineers

2. The term of this Agreement is February 2004 through Completion of the Project. This Agreement shall not become effective until approved by the Department of the Army Corps of Engineers.
3. The maximum amount of this Agreement after this amendment is: \$977,941,000.00. Nine hundred and seventy-seven million nine forty one thousand dollars and no cents.
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

See Amendment 2 attached the Project Cooperation Agreement between the State of California Department of Water Resources and The Department of the Army Corps of Engineers for the construction of the American River Watershed, California (Folsom Dam Modifications)

Signatures appear on pages 4 of 8 of the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

CALIFORNIA
Department of General Services
Use Only

APPROVED

JUN - 9 2010

DEPT. OF GENERAL SERVICES