

AMENDMENT NUMBER 3
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 3 is entered into this 4th day of March, 2012, 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 hereinafter as the "Non-Federal Sponsors").

WITNESSTH, 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 (hereinafter the "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 Agreement on August 24, 2009 to construct the authorized auxiliary spillway;

WHEREAS, the Government and the Non-Federal Sponsors entered into Amendment Number 2 to the Agreement on June 21, 2010 to afford credit for the Federal share of costs incurred by SAFCA in connection with the Natomas levee features;

WHEREAS, the Non-Federal Sponsors propose to accelerate their provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsors' required cash contribution for the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, less any funds previously contributed, for the immediate use by the Government for construction of the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California; and

WHEREAS, the parties agree that such acceptance shall not represent or give rise to an obligation of the United States, including any obligation to provide reimbursement of the funds the Non-Federal Sponsors elect to provide or any obligation to request future funds to match the amount the Non-Federal Sponsors elect to provide, and that such funds will be credited against the Non-Federal Sponsors' future cost share when additional Federal funds are appropriated.

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

1. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS is amended by inserting the following additional paragraphs at the end thereof:

“N. The State may offer in writing to accelerate provision to the Government of all or a portion of their contribution of funds required by paragraph D. of this Article for immediate use by the Government for construction of the Project. Upon receipt of any such offer from the State, the Government shall seek the approval and acknowledgement required to accept and use the accelerated funds. Upon receipt of such approval and acknowledgement, the Government shall notify the State in writing of receipt of such approval and acknowledgement. Upon receipt of such accelerated funds, the Government shall use such funds for construction of the Project. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the State's contribution of funds required by paragraph D. of this Article minus any funds previously contributed by the State as of the date the Government accepts the offered funds.

O. As Federal appropriations are made available to pay the Federal share of the construction of the Project the Government shall afford credit for the funds provided in accordance with paragraph N. of this Article toward the State's contribution of funds required by paragraph D. of this Article.”

2. ARTICLE VI – METHOD OF PAYMENT is amended as follows:

a. Paragraph A. is amended by inserting “of the credit afforded pursuant to Article II.O. of this Agreement,” after “of the State's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement,” and before “of the non-Federal proportionate share of the total project costs actually incurred to date.”

b. Paragraph B.2.a. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O. of this Agreement,” after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

c. Paragraph B.2.b. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O. of this Agreement,” after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

d. Paragraph B.2.c. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O of this Agreement, “ after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

e. Paragraph B.3., first sentence, is amended by deleting “and” before “(c)” and by inserting the following at the end of the sentence: “; and (d) to the extent funds are offered and accepted in accordance with Article II.N. of this Agreement, any other financial obligation for construction in excess of the non-Federal proportionate share as they are incurred during the period of construction.”.

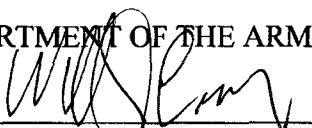
f. Paragraph B.3., second sentence, is amended by inserting “, after consideration of the credit the Government affords pursuant to Article II.O. of this Agreement,” after “the Government determines” and before “that additional funds will be needed” in the second sentence.

g. Paragraph D.2. is amended by adding the following at the end thereof: “However, if the final accounting is conducted prior to the end of the period of construction due to termination of the Agreement pursuant to Article XIV of this Agreement, and the State accelerated provision of its required contribution of funds in accordance with Article II.N. of this Agreement, the Government shall refund to the State only that portion of any such accelerated funds that were not obligated by the Government for work on the Project, subject to the availability of funds.”

3. All other terms and conditions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 3 to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

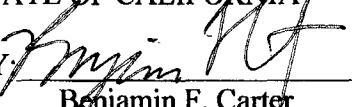
DEPARTMENT OF THE ARMY

BY: 

William J. Leady, P.E.
Colonel, U.S. Army
District Commander

DATE: 4 MARCH 2012

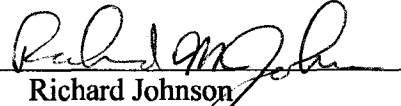
STATE OF CALIFORNIA

BY: 

Benjamin F. Carter
President
Central Valley Flood Protection
Board

DATE: 2 FEBRUARY 2012

SACRAMENTO AREA
FLOOD CONTROL AGENCY

BY: 

Richard Johnson
Executive Director

DATE: 16 FEB 2012

CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of the Central Valley Flood Protection Board ("Board") for this project, acting on behalf of the State of California, that the Board is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 3 to the Agreement Between The Department of The Army, The State of California and the Sacramento Area Flood Control Agency, in connection with the American River Watershed, California (Folsom Dam Modifications), 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 on this 30 day of January, 2012.



Jeremy Goldberg
Legal Counsel
Central Valley Flood Protection Board



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.

BY: 

Benjamin F. Carter, President

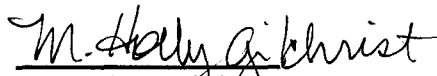
Central Valley Flood Protection Board

DATE: 2 FEBRUARY 2012

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 3 to the Agreement Between The Department of The Army, The State of California and the Sacramento Area Flood Control Agency in connection with the American River Watershed, California (Folsom Dam Modifications) 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 Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this 15 day of Feb 2012.

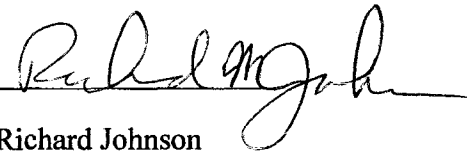

M. Holly Gilchrist
Counsel for the
Sacramento Area Flood Control Agency

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.

BY: 

Richard Johnson

Sacramento Area Flood Control Agency

DATE: 16 Feb 2012