

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
MARYSVILLE LEVEE DISTRICT, CALIFORNIA
FOR
CONSTRUCTION
OF THE
YUBA RIVER BASIN, CALIFORNIA
MARYSVILLE RING LEVEE PROJECT

THIS AMENDMENT is entered into this 17 day of March, 2017, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the State of California acting by and through the Central Valley Flood Protection Board, represented by its President and the Marysville Levee District, California represented by the President of the Board of the Marysville levee Commission (hereinafter the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Yuba River Basin Project for flood-risk management (hereinafter the "Authorized Project") at Yuba County, California, was authorized by Section 101(a) (10) of the Water Resources Development Act of 1999 (Public Law 106-53) as modified by Section 3041 of the Water Resources Development Act of 2007 (Public Law 110-114);

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Partnership Agreement (hereinafter the "Agreement") on July 21, 2010 for construction of the Marysville Ring Levee (a separable element of the Authorized Project);

WHEREAS, Section 3041 of the Water Resources Development Act of 2007 authorizes the Secretary of the Army to credit, in accordance with Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b), toward the Non-Federal Share of the cost of the Authorized Project, the cost of the non-Federal work carried out for the Authorized Project prior to the execution of the Agreement;

WHEREAS, on February 12, 2014, the Assistant Secretary of the Army (Civil Works) determined that certain non-Federal in-kind design and construction work on flood risk management features in Reach 1 (Linda/Olivehurst), a separable element of the Authorized Project, is integral to the Authorized Project;

WHEREAS, the Government's evaluation of the costs of the Non-Federal work in Reach 1 (Linda/Olivehurst) that was determined by the Assistant Secretary of the Army (Civil Works) to be

integral to the Authorized Project concluded that the Government may afford the Non-Federal Sponsors up to 42,827,000 in credit for such work (hereinafter the “*maximum credit amount*” as defined by Article I.O. of this Agreement); and

WHEREAS the Government and the Non-Federal Sponsors desire to amend the Agreement to include Reach 1 (Linda/Olivehurst) within the scope of the *Project* and to afford up to the *maximum credit amount* toward the Non-Federal Sponsors’ additional cash contribution for the *Project*, exclusive of the 5 percent minimum non-Federal cash contribution required by Section 103(a)(1)(A) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(a)(1)(A)).

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to amend the Agreement dated July 21, 2010 as follows:

1. The Agreement title is amended by striking the current title and replacing it with the following:

“PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
THE MARYSVILLE LEVEE DISTRICT, CALIFORNIA
FOR
CONSTRUCTION
OF THE
YUBA RIVER BASIN, CALIFORNIA
MARYSVILLE RING LEVEE AND REACH 1 (LINDA/OLIVEHURST) PROJECT”

2. ARTICLE I – DEFINITIONS

a. Paragraph A. is amended by adding the following at the end thereof: “; and construction of similar improvements to approximately 29.4 miles of levees extending along the left bank of the Yuba River from the Goldfields at Yuba River Project Levee Mile (PLM) 6.1 to the confluence with the Feather River and along the left bank of the Feather River from the Yuba River confluence to PLM 23.4, designated as: Reach 1 (Linda/Olivehurst) as generally described in the Post Authorization Documentation Report, dated June 2012, and approved by Commander, South Pacific Division on December 18, 2012.”

b. Paragraph B. is amended by:

(1) inserting in the second sentence the phrase “that share of the *maximum credit amount* that the Government affords for *in-kind contributions* in accordance with Article II.B.3.b. of this Agreement;” after “the Government’s supervisors and administration costs;” and before “the Non-Federal Sponsors’ and the Government’s costs of participation in the Project Coordination Team”; and

(2) inserting in the last sentence the phrase “that share of the *maximum credit amount* not afforded for *in-kind contributions* in accordance with Article II.B.3.b of this Agreement;” after “Article VII of this Agreement;” and before “the Government’s cost for data recovery activities”,

c. Article I is further amended by adding the following paragraphs at the end thereof;

“N. The term “*in-kind contributions*” shall mean the non-Federal design and construction of improvements to Reach 1 (Linda/Olivehurst) flood risk management features along the Yuba River and the Feather River carried out on or before July 21, 2010 that were determined to be integral to the Authorized Project on February 12, 2014, and that are supported by sufficient invoice.”

O. The term “*maximum credit amount*” shall mean the lesser of \$42,827,000 or that portion of \$42,827,000 supported by sufficient invoice.

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

a. Paragraph A is amended by inserting “, except for the *in-kind contributions*,” after “(including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto)”, and before “applying those procedures usually applied to Federal projects”.

b. Paragraph A.4. is amended by striking “\$110,000,000” and inserting “\$152,039,000.”

c. Paragraph B.1. is amended by adding the following sentence at the end thereof; “None of the credit amount that the Government affords for *in-kind contributions* may be used to fulfill this requirement.”

d. Paragraph B.3. is amended by striking the current provision and replacing it with the following:

“3. The Non-Federal Sponsors shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Sponsors’ contributions pursuant to the Design agreement, and in accordance with paragraphs B.1. and B.2. of this Article and Articles V., X., and XIV.A. of this Agreement will be less than 35 percent of the *total project costs*. This determination shall be made prior to the Government affording credit pursuant to paragraph B.3.b., of this Article.

b. Should the initial calculation of the additional cash contribution determined in accordance with paragraph B.3.a. of this Article be less than the *maximum credit amount*, the Government shall afford credit for *in-kind contributions* toward the additional cash contribution up to the *maximum credit amount*. The credit amount to be afforded shall be determined by adjustment through several iterative recalculations of *total project cost*, for the purpose of excluding from *total project cost* the share of the *maximum credit amount* that exceeds the required non-Federal additional cash contribution. The Government shall in no event reimburse to the Non-Federal Sponsors the share of

the *maximum credit amount* that exceeds the required non-Federal additional cash contribution, and nothing herein shall be construed in any manner to create a right or claim to such reimbursement.

c. Should the calculation of the additional cash contribution determined in accordance with paragraph B.3.a. of this Article be equal to or *exceed* the *maximum credit amount*, the Government shall afford the full *maximum credit amount* toward the additional cash contribution, and any additional funds necessary to meet the total additional cash contribution determined in accordance with paragraph B.3.a. of this Article shall be provided by the Non-Federal Sponsors in accordance with Article VI.B. of this Agreement.”

e. Paragraph B.4. is amended by striking “paragraph B.3. of this Article,” and replacing it with “paragraph B.3.c. of this Article (including the credit amount afforded by the Government);”.

f. Paragraph F. is amended by striking the current provision and replacing it with the following:

“F. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of their obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.”

4. Article IV – CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

Paragraph A., last sentence, is amended by striking the phrase “unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law” and replacing it with “unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*”.

5. Article VI – METHOD OF PAYMENT

a. Paragraph A. is amended by adding the following phrase at the end thereof;”, and the amount of credit that the Government projects it will afford for in-kind contributions toward the Non-Federal Sponsors’ required additional cash contribution up to the *maximum credit amount*.”

b. Paragraph A.1. is amended by striking the current provision and replacing it with the following:

“1. As of the effective date of Amendment No. 1. To this Agreement total project costs are projected to be \$152,039,000. The Non-Federal Sponsors’ cash contribution of funds required by article II.B.1 of this Agreement is projected to be \$7,602,000 (5 percent of \$152,039,000); the Non-Federal Sponsors’ contribution of additional funds required by Article II.B.3 of this Agreement is projected to be \$0; the credit amount for the *in-kind contributions* that the Government will afford toward the Non-Federal Sponsors’ required cash contribution in accordance with Article II.B.3.b. of this Agreement is projected to be \$24,834,000; the non-Federal proportionate share is projected to be 5.79 percent; the Non-Federal Sponsors’ contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; the value included in total project costs for lands, easements, right-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$20,778,000; and the Government’s total financial obligations for

the additional work to be incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors."

c. Paragraph A.2. is amended by inserting "the amount of the credit that the Government projects it will afford for *in-kind contributions* up to the *maximum amount of credit*," after the first occurrence of "Article II.B.3. of this Agreement;" and before "*the non-Federal proportionate share*;"

d. Paragraph B.2.a is amended by inserting "after consideration of the amount of the credit the Government affords for *in-kind contributions* up to the *maximum amount of credit*," after "consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement," and before "to meet".

e. Paragraph B.2.b. is amended by inserting "after consideration of the amount of credit the Government affords for *in-kind contributions* up to the *maximum amount of credit*," after "consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement," and before "to meet:".

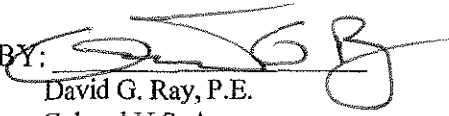
f. Paragraph B.2.c. is amended by inserting "after consideration of the amount of credit the Government affords for *in-kind contributions* up to the *maximum amount of credit*," after "consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement," and before "to meet:".

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

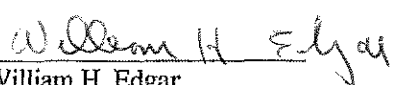
IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 to the Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

BY: 

David G. Ray, P.E.
Colonel U.S. Army
District Commander

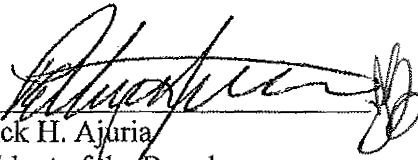
BY: 

William H. Edgar
President of the Board
The Central Valley Flood Protection Board

DATE: 17 MARCH 2017

DATE: 3/15/17

MARYSVILLE LEVEE DISTRICT, CALIFORNIA

BY: 
Patrick H. Ajuria
President of the Board
Marysville Levee Commission

DATE: 03/06/2017

CERTIFICATE OF AUTHORITY

I, Kanwarjit Dua, do hereby certify that I am the principal legal advisor 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 the Agreement, as amended, between the Department of the Army, the State of California and the Marysville Levee District in connection with the Yuba Basin, California, Marysville Ring Levee and Reach 1 (Linda/Olivehurst) 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, through the Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16th day of March ~~2016~~ 2017


[NAME] Kanwarjit Dua
Legal Counsel on behalf of the Board
State of California, Department of Water Resources

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.



William H. Edgar
President of the Board
The Central Valley Flood Protection Board

DATE: 3/15/17

CERTIFICATE OF AUTHORITY

I, Carl R. Lindmark , do hereby certify that I am the principal legal advisor of the Marysville Levee District, California, that the Marysville Levee District, California is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, as amended, between the Department of the Army, the State of California and the Marysville Levee District in connection with the Yuba Basin, California, Marysville Ring Levee and Reach 1 (Linda/Olivehurst) 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, through the Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 6th day of

March 2016.



[NAME] Carl R. Lindmark

Legal Counsel

Marysville Levee District, California

CERTIFICATION REGARDING LOBBYING

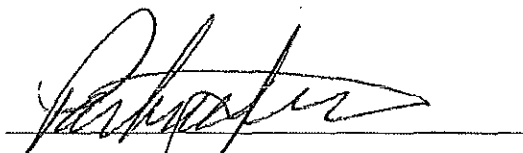
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

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Patrick H. Ajuria
President of the Board
Marysville Levee Commission

DATE: 03/06/2017



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

FEB - 3 2017

MEMORANDUM FOR THE DEPUTY COMMANDING GENERAL FOR CIVIL AND
EMERGENCY OPERATIONS

SUBJECT: Yuba River Basin, California Marysville Ring Levee Project Partnership
Agreement (PPA), Amendment #1

This responds to a memorandum from the Director of Civil Works dated
November 21, 2016, requesting approval of the subject draft amendment. Approval is
granted.

Authority to sign the Yuba River Basin, California Marysville Ring Levee Project
PPA, Amendment #1 on behalf of the Department of Army is hereby delegated to the
district commander.

Douglas W. Lamont, P.E.
Senior Official Performing the Duties of the
Assistant Secretary of the Army
(Civil Works)