

AMENDMENT NUMBER 2
TO THE
PROJECT PARTNERSHIP 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 AND REACH 1 (LINDA/OLIVEHURST) PROJECT

This Amendment Number 2 is entered into this 29th day of MARCH, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Sacramento District 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, acting by and through the Marysville Levee Commission, represented by its President (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 on July 21, 2010 (hereinafter referred to as the "Agreement") for construction of the Marysville Ring Levee separable element of the Authorized Project;

WHEREAS, on March 17, 2017, the Agreement was amended to increase the scope of the Project to include Reach 1 (Linda/Olivehurst) of the Authorized Project (hereinafter the "Project" as defined in Article I.A. of the Agreement, as amended) and to afford credit for in-kind contributions provided by the Non-Federal Sponsors in the design and construction of Reach 1, as provided therein; and

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose.

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

1. Insert after the third WHEREAS clause the following:

“WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;”

2. Insert as the last Article the following:

**“ARTICLE XXII – COMPLETION OF CONSTRUCTION OF THE PROJECT USING
FUNDING PROVIDED IN BBA 2018**

Notwithstanding any other provisions of this Agreement, the Government and Non-Federal Sponsors agree to the following terms and conditions for completion of construction of the Project:

A. Non-BBA 2018 Construction funds provided for the Project, including funds provided by the Energy and Water Development and Related Agencies Appropriations Act, 2019 (Public Law 115-244), will be used for the approved work for which they were provided, with such funds subject to cost sharing as otherwise provided for in this Agreement.

B. As of the effective date of Amendment Number 2 to this Agreement, the amount of available BBA 2018 funds for the Project is estimated at \$ 13,586,000.00. To the extent BBA 2018 funds are available and used to complete construction of the Project, the following provisions apply:

1. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.

2. The Non-Federal Sponsors remain responsible for providing the lands, easements, and rights-of-way, and performing all relocations, and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete construction of the Project.

a. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in acquiring such lands, easements, and rights-of-way, except as provided in Article XXII.E. The crediting procedures in Article IV.C. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to

acquire any lands, easements, or rights-of-way on the Non-Federal Sponsors' behalf, using BBA 2018 funds.

b. Any publicly owned lands, easements, and rights-of-way required for completing construction of the Project will be provided by the Non-Federal Sponsors at no cost to the Government and without credit or reimbursement, except as provided in Article XXII.E.

c. For relocations performed after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in performing such relocations, except as provided in Article XXII.E. The crediting procedures in Article IV.D. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to perform any relocations on the Non-Federal Sponsors' behalf, using BBA 2018 funds.

d. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in making such improvements, except as provided in Article XXII.E. The crediting procedures in Article IV.E. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to make any improvements on the Non-Federal Sponsors' behalf, using BBA 2018 funds.

3. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incur, after the effective date of Amendment Number 2 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XIV.A.

4. The Non-Federal Sponsors shall be responsible solely for any costs they incur, after the effective date of Amendment Number 2 to this Agreement, for participation in the Project Coordination Team and for conducting audits, without credit or reimbursement by the Government.

5. In the event that there are insufficient BBA 2018 funds to complete construction of the Project, such completion shall be subject to cost-sharing as otherwise provided for in this Agreement.

C. Nothing in this Article affects the responsibility of the Non-Federal Sponsors for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided in Article IX.

D. Except as provided in Article XXII.B.3., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XIV.

E. As soon as practicable, the Government shall perform an interim accounting of work that has or will be completed with other than BBA 2018 funds on a cost-shared basis and furnish the Non-Federal Sponsors with the results of such interim accounting.

1. If the Government determines that the Non-Federal Sponsors have not met their minimum required cash contribution for the cost-shared work, the Non-Federal Sponsors shall provide funds in the amount necessary to meet the required minimum cash contribution.

2. If the Government determines that the Non-Federal Sponsors owe an additional amount to meet the required minimum non-Federal share of the cost-shared work, the amount owed by the Non-Federal Sponsors may be reduced by the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsors must provide after the date of Amendment Number 2 to this Agreement.

3. If the Government determines the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsors must provide after the date of Amendment Number 2 to this Agreement is less than the additional amount necessary to meet the required minimum non-Federal share of the cost-shared work, the Non-Federal Sponsors shall either provide the required amount in cash or elect to waive reimbursement of the required amount for privately owned lands, easements, and rights-of-way, relocations, and improvements to enable the disposal of dredged or excavated material to be acquired, provided, or made after the date of Amendment Number 2 to this Agreement.

4. The determinations made as a result of the interim accounting shall be verified during the final accounting. The crediting procedures in Article IV.C. shall be used to verify the value of any publicly owned lands, easements, and rights-of-way used to reduce the amount owed by the Non-Federal Sponsors for the cost-shared work.

5. BBA 2018 funds shall not be used to provide reimbursements for any in-kind contributions provided by the Non-Federal Sponsors that exceed their cost share for the work that has been or will be completed with other than BBA 2018 funds.

3. All other terms and conditions of this Agreement remain unchanged.

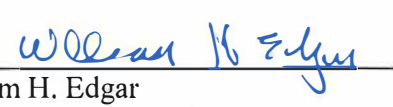
IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 2 which shall become effective upon the date it is signed by the District Commander for the Sacramento District

DEPARTMENT OF THE ARMY

BY: 
David G. Ray, PE
Colonel, U.S. Army
Commander and District Engineer

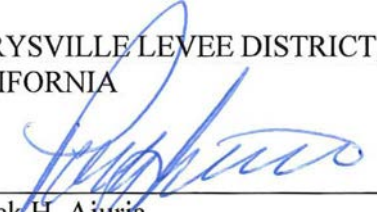
DATE: 29 MAR '19

STATE OF CALIFORNIA

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

DATE: 3/29/2019

MARYSVILLE LEVEE DISTRICT,
CALIFORNIA

BY: 
Patrick H. Ajuria
President of the Board

DATE: 01/24/2019

CERTIFICATION REGARDING LOBBYING

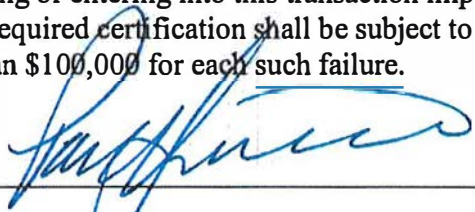
The undersigned certifies, to the best of his or her knowledge and belief that:

(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: 

Patrick Ajuria, President
Marysville Levee Commission
Marysville, California

DATE: 2018/14/12

CERTIFICATION REGARDING LOBBYING

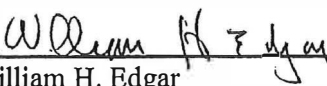
The undersigned certifies, to the best of his or her knowledge and belief that:

(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

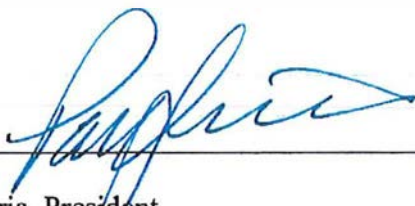
DATE: 11/25/2019

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Patrick Ajuria, do hereby certify that I am the President and Chief Financial Officer of the Marysville Levee Commission, the governing Board of the Marysville Levee District (a "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsors for the Yuba River Basin, California, Marysville Ring Levee Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement Between the Department of the Army, the State of California and the Marysville Levee Commission for the Construction of the Yuba River Basin, California, Marysville Ring Levee Project.

IN WITNESS WHEREOF, I have made and executed this certification this this 14th day of December 2018.

BY: _____



Patrick Ajuria, President
Marysville Levee Commission
Marysville, California

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Leslie M. Gallagher, do hereby certify that I am the Executive Officer of the State of California Central Valley Flood Protection Board (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Yuba River Basin, California, Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement Amendment Number 2 between the Department of the Army, the State of California, and the Marysville Levee Commission, for the Construction of the Yuba River Basin, California, Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project.

IN WITNESS WHEREOF, I have made and executed this certification this 25 day of January, 2019.

BY: Leslie M. Gallagher

Leslie M. Gallagher
Executive Officer, State of California
Central Valley Flood Protection Board

CERTIFICATE OF AUTHORITY

I, Carl R. Lindmark, do hereby certify that I am the principal legal officer of the Marysville Levee Commission, the governing Board of the Marysville Levee District, California, that is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment 2 to the Project Partnership Agreement between the Department of the Army, the State of California and the Marysville Levee District, California in connection with the Marysville Ring Levee Project (a separable element of the Yuba River Basin, California 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 Marysville Levee District, California have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 14th day of December 2018.



Carl R. Lindmark
Legal Counsel
Marysville Levee District, California

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 in Amendment Number 2, between the Department of the Army and 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 Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who executed this Agreement on behalf of the State of California acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
25th day of January 2017.



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