

**Meeting of the Central Valley Flood Protection Board  
February 26, 2016**

**Staff Report**

**United States Army Corps of Engineers  
Marysville Ring Levee Project Partnership Agreement Amendment No. 1,  
Yuba County**

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**1.0 – ITEM**

Consider Central Valley Flood Protection Board approval of Resolution No. 2016-02 (Attachment A) to:

- approve the three-way Project Partnership Agreement Amendment No.1 (Exhibit B) between the Board, the Marysville Levee District, and U.S. Army Corps of Engineers for the Yuba River Basin, Marysville Ring Levee (MRL) Project (Attachment B) in substantially the form provided; and
- delegate to the Board President the authority to execute the agreement, in substantially the form provided.

**2.0 – SPONSORS**

Federal: U.S. Army Corps of Engineers (USACE)  
State: The Central Valley Flood Protection Board (Board)  
Local: Marysville Levee District (MLD)

**3.0 – PROJECT LOCATION**

The project is located approximately 30 miles north of Sacramento at the confluence of the Yuba and the Feather Rivers, surrounding the City of Marysville, in Yuba County (Attachment B).

**4.0 – PROJECT DESCRIPTION**

The MRL Project is part of the Yuba River Basin Project and will increase the level of flood protection in Marysville to greater than a 200-year level of protection. The project will install approximately 5.1 miles of new slurry wall and berm along the ring levee surrounding the City of Marysville.

## **5.0 – PROJECT BACKGROUND**

The historic City of Marysville is located at the confluence of the Yuba and Feather Rivers, approximately 40 miles north of Sacramento. The City is surrounded by a ring levee providing flood protection for approximately 12,700 residents and essential infrastructure including State Highways 20, 65, 70, and major railways (Attachment B).

In the past century, flood events occurred in the basin in 1950, 1955, 1964, 1986, and 1997. Based on analysis of these floods, about five (5) of the 7.5 miles of ring levee were identified as needing improvements to resist potential seepage issues for flood events exceeding a 200-year event for the Yuba and Feather Rivers.

The MRL Project is a separable element of the larger Congressionally-authorized Yuba River Basin Project, which was authorized through the Water Resources Development Act (WRDA) of 1999 (P.L. 106-53), and re-authorized in 2007 (P.L. 110-114). The Yuba River Basin Project consists of three reaches: Reach 1 is Linda/Olivehurst, Reach 2 is Lower RD784, and Reach 3 is MRL. Reach 3 is the remaining feature of the project.

As the Federal sponsor, the USACE entered into a three-way Project Partnership Agreement (PPA) for MRL with the Board and MLD in July 2010 (Exhibit A). The Board also subsequently entered into a Local Project Partnership Agreement (LPPA) with MLD.

The MRL Project was divided into four (4) phases based on factors of safety and to streamline design and contracting (Attachment B). The Project Delivery Team consists of project managers, engineers, attorneys, real estate and environmental specialists from USACE's Sacramento District, MLD's consulting engineer, MBK Engineers, Department of Water Resources (DWR), Flood Project Office and Board staff.

By being part of the Federally authorized Yuba River Basin Project and achieving a greater than 200-year level of flood protection for the City of Marysville, MRL is consistent with the 2012 Central Valley Flood Protection Plan.

Phase 1 construction was completed in 2013 using American Recovery and Reinvestment Act funds as well as a non-federal cost share. The Board and MLD assumed Operation and Maintenance responsibility on July 31, 2014. MLD continues to maintain the levee.

## **6.0 – AUTHORITIES**

Federal: WRDA 2007 (Section 3041), WRDA 1999 (Section 101, (10)).

State: California Water Code Sections 8615, 12616, 12670.7

## **7.0 – FUNDING STATUS**

- USACE completed an Integral Determination Report (IDR) on October 31, 2013 to affirm that work completed by the State and Local Agencies in Reach 1 of the Yuba River Basin Project was integral to providing flood protection to the Basin.
- The Assistant Secretary of the Army, Civil Works (ASA) approved the IDR in a letter dated February 12, 2014.
- USACE has been working toward executing an amendment to the PPA to allow the non-Federal sponsors to receive Section 221 Credit as directed under Section 3041 of the Water Resources Development Act of 2007 by the State and Local Agencies for work performed along the Yuba River.
  - This work was carried out by Three Rivers Levee Improvement Authority and cost shared by the State through DWR's Early Implementation Program.
- When the PPA is amended (Amendment No. 1), applicable costs associated with this advanced work can be applied to the non-federal cost share of the MRL, and no additional payments are expected to stay in cost-share balance with USACE.
  - The amendment will allow up to \$42.8 million in credits to be used on the project and potentially other projects as well.
- Remaining project costs are estimated at \$85 million for the MRL Project, but final costs may be lower due to design refinements in Phases 2B and 3, and a favorable construction climate.
- Total project costs for the entire Yuba River Basin Project are currently approximately \$152 million.
- This amendment is under review by the USACE HQ and is anticipated to be approved and sent back to the Board and MLD for approval with non-substantive changes prior to the March 25, 2016 Board meeting.
- DWR is seeking approval of PPA Amendment No.1 (Exhibit B) in substantially the form provided. Attachment C provides a comparison of the previously approved PPA with edits reflecting PPA Amendment No. 1.
  - Non-substantive changes are anticipated and will be reviewed by DWR and Board staff prior to Board President signature.

## **8.0 – PROJECT ACTIVITIES**

The statuses of the four phases of the project are described below in order of completion.

**Phase 1:** Construction was completed in 2013. State and Locals are submitting crediting packages for eligible staff costs and utility relocations.

**Phase 4A:** Design is complete; Lands, Easements, Relocations, Rights of Way, and Disposal Sites (LERRDs) have been acquired. Including Union Pacific Railroad (UPRR) berm agreement and accepted by USACE. Construction expected to commence in spring 2016.

**Phase 2A:** Scheduled for construction in spring 2016. Design is complete. State and Local sponsors are acquiring LERRDs listed in a take letter issued by USACE. MLD is taking the lead on acquiring rights from UPRR and moving PG&E power poles and the State is taking the lead on moving Sprint fiber optic lines.

**Phase 2C:** Scheduled for construction in spring 2017, but may be able to award construction in 2016 if LERRDS can be acquired by then.

**Phase 2B:** In initial design phase. It will be performed via Architectural and Engineering (A/E) contract, not by in-house USACE engineering. Value engineering meetings will be written into the scope of the A/E contract.

**Phase 3:** Design will occur in 2016, followed by real estate acquisition in 2017 and 2018 with construction currently scheduled in the summer of 2019. This phase has the potential for a condemnation action due to one inhabitant in the floodway. This phase could be further subdivided if adequate federal construction appropriations are not received.

## **9.0 – STAFF RECOMMENDATION**

Staff recommends that the Board adopt Resolution No. 2016-02 (Attachment A) to:

**Approve:** the three-way PPA Amendment No. 1 (Exhibit B) between the Board, MLD, and USACE to allow the State to receive credit for improvements in the Yuba River Basin and update current authorized project costs; and

**Delegate:** authority to the President of the Board to execute Amendment No. 1 to the PPA, with non-substantive changes after USACE ASA approval, in substantially the form provided.

**10.0 – LIST OF ATTACHMENTS**

A – Resolution No. 2016-02

Exhibit A: Existing Approved PPA

Exhibit B: Draft PPA Amendment 1

B – Project Map

Prepared By: Preston Shopbell, PE, DWR, Flood Projects Office (FPO)  
Report Review: Robert E. Scarborough, PE, DWR FPO Section C Chief  
Michael Sabbaghian, PE, DWR Flood Risk Reduction Projects Branch Chief  
Eric Koch, DWR Flood Projects Office Chief  
Legal Review: Robin Brewer, DWR Assistant Chief Counsel  
Board Staff Review: Nancy Moricz, Senior Engineer  
Eric Butler, Supervising Engineer  
Leslie Gallagher, Executive Officer

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

DRAFT RESOLUTION NO. 2016-02

FINDINGS AND DECISION AUTHORIZING  
APPROVAL OF PROJECT PARTNESHIP AGREEMENT AMENDMENT 1  
FOR THE YUBA RIVER BASIN, MARYSVILLE RING LEVEE PROJECT, YUBA COUNTY

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

**WHEREAS**, the Department of the Army, U.S. Army Corps of Engineers (USACE) and the Central Valley Flood Protection Board (Board), formerly The Reclamation Board, entered into a design agreement (Design Agreement) on June 13, 2000 for engineering and design of the Authorized Project, which obligates the Board to pay a portion of the costs for engineering and design of the Authorized Project as a cost sharing partner with USACE; and

**WHEREAS**, the Board and Yuba County Water Authority (YCWA) entered into local design agreement (Local Design Agreement) on November 11, 2000 where the Board and YCWA agreed to share the non-federal costs of the design project and agreed on a cost share formula and the delegation of responsibilities for the non-federal design obligations for the Authorized Project; and

**WHEREAS**, the Urban Level of Flood Protection Criteria, developed in response to the requirements from the Central Valley Flood Protection Act of 2008, enacted by Senate Bill 5 (Chapter 364, Statutes of 2007), the State of California Department of Water Resources (DWR), Division of Flood Management established a minimum flood protection requirement for urban communities for a 200-year protection level, which the Authorized Project does not meet; and

**WHEREAS**, USACE and the Board initially understood in 2008 that reevaluation of the Authorized Project via a General Reevaluation Report (GRR) would be necessary to formulate alternatives that could correct current Authorized Project flood protection deficiencies; and

**WHEREAS**, USACE determined on February 12, 2008 that the Marysville Ring Levee Project (MRL or Ring Levee Project) is hydraulically separate from the Authorized Project, that the design for the MRL, which was a part of the original Authorized Project design has not changed and does not need a reevaluation so the MRL is deemed to be a separable element of the Authorized Project not subject to reevaluation which can be designed and constructed on a separate parallel path with the GRR; and

**WHEREAS**, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), requires each non-federal partner to enter into a written agreement with the Secretary of the Army for the project or separable element before the Secretary of the Army commences construction of any water resources project, or any element of a water resources project; and

**WHEREAS**, the Board and the Marysville Levee District (MLD) each assume the responsibilities of the non-Federal Sponsor under the terms of the Project Partnership Agreement (PPA),

equal to and exclusive of each other; and

**WHEREAS**, the Local Sponsor (MLD) provided Board Resolution LC-2010-01 on April 5, 2010 approving the draft PPA and Local Project Partnership Agreement (LPPA), and certifying their financial capability to participate in the Ring Levee Project as a non-Federal partner to the PPA, and as a Local Sponsor to the LPPA, in the design and construction of the Ring Levee Project; and

**WHEREAS**, the non-Federal Partners entered into a LPPA for construction of the Ring Levee Project on July 21, 2010; and

**WHEREAS**, the MLD provided a resolution to the Board and self-certification expressing their interest and financial capability to participate in the Ring Levee Project as a non-Federal partner to the PPA, and as a Local Sponsor to the LPPA, in the design and construction of the Ring Levee Project; and

**WHEREAS**, the MLD, acting by and through the Marysville Levee Commission has provided a November 13, 2009 Marysville Levee Commission Board Resolution stating its intent and authority to enter into partnership and cost sharing agreements with the USACE and the Board; and

**WHEREAS**, USACE and the non-Federal Partners have the full authority and capability to perform and intend to cooperate in cost sharing and financing of the Ring Levee Project in accordance with the terms of the PPA; and

**WHEREAS**, the MLD, USACE and the Board entered into a PPA on July 31, 2010 (Exhibit A, attached hereto and incorporated by reference) for design and construction of the MRL, which is a separable element of the Authorized Project, as defined in Article I.A. of the PPA; and

**WHEREAS**, \$13,000,000 in American Recovery and Rebuilding Act funds were made available for the Ring Levee Project, contingent upon USACE executing the PPA and awarding a construction contract by June, 2010; and

**WHEREAS**, the design and construction costs under the terms of the PPA are cost-shared between the Federal and non-Federal Partners and apportioned at a rate of 65% and 35%, respectively; and

**WHEREAS**, the non-Federal design and construction costs are to be cost-shared between the Board and the Local Sponsors and apportioned at a rate of 70% and 30%, respectively; and

**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 (a) (4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b (a) (4)), toward the Non-Federal Share of the cost of the Authorized Project, work carried out prior to the execution of the Agreement; and

**WHEREAS**, on December 7, 2012, USACE South Pacific Division released a Memorandum regarding a Strategic Plan for the Yuba River Basin Project, stating that the USACE Sacramento District will stop work on the GRR and instead prepare a Limited Reevaluation Report and Integral Determination Report to determine that the Reach 1 (Linda/Olivehurst) completed by the Non-Federal Sponsors is integral to the completion of the Authorized Project, and amend the PPA to include the appropriate costs as credit toward the Non-Federal Sponsors share of Costs of the MRL.

**WHEREAS**, on February 12, 2014, the Secretary determined that the construction of parts of the Upper Yuba Levee Improvement Project is integral to Reach 1 of the Authorized Project, as defined in

accordance with Section 221 of the Flood Control Act of 1970, and is thereby creditable pursuant to Section 3041 of the Water Resources Development Act of 2007; and

**WHEREAS**, the Government and the Non-Federal Sponsors desire to amend the PPA to provide credit for the portions of Reach 1 (a separable element of the Authorized Project) determined by the Secretary of the Army to be transferred between separable elements of the Authorized Project pursuant to Section 3041 of the Water Resources Development Act of 2007; and

**WHEREAS**, the MRL is consistent with the 2012 Central Valley Flood Protection Plan and advances the vision for an integrated flood management system in the Central Valley to provide for safe, healthy, and thriving communities while protecting and restoring the environment.

**NOW, THEREFORE, LET IT BE RESOLVED** that the Central Valley Flood Protection Board:

- 1 Approves the three-way PPA Amendment No. 1 between the Board, the MLD and USACE for the Yuba River Basin, California, MRL Project in substantially the form attached hereto (Exhibit B, incorporated by reference).
- 2 Delegates to the Board President the authority to execute Amendment No. 1 to the PPA, with non-substantive changes after USACE Headquarters approval and in substantially the same as the form attached hereto.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2016.

\_\_\_\_\_  
William H. Edgar  
President

\_\_\_\_\_  
Jane Dolan  
Secretary



STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 4600008921
REGISTRATION NUMBER


- This Agreement is entered into between the State Agency and the Contractor named below:  
 STATE AGENCY'S NAME  
 Department of Water Resources  
 CONTRACTOR'S NAME  
 The Department of the Army Corps of Engineers
- The term of this Agreement is: September 28, 2010 through Completion of the Project  
 This Agreement shall not become effective until approved by the Department of General Services.
- The maximum amount of this Agreement is: \$12,343,046.00  
 Twelve million three hundred and forty-three thousand and forty-six hundred dollars and no cents.
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

See attached the Project Partnership Agreement between the State of California Department of Water Resources acting by and through the Central Valley Flood Protection Board, the Marysville Levee District acting by and through the Marysville Levee Commission and U.S. Department of the Army Corps of Engineers, for the construction of the Yuba River Basin, Marysville Ring Levee Project.

The Non-Federal Sponsor shall pay in advance as required by OMB Circular A-97. The Non-Federal Sponsor certifies that the Floodplain Services being requested pursuant to this Project Partnership Agreement (PPA) cannot be procured reasonably and expeditiously through ordinary business channels.

**Signatures appear on page 29 of the Project Partnership Agreement**

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

CONTRACTOR		California Department of General Services Use Only
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		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>APPROVED</p> <p>AUG - 2 2010</p> <p>DEPT OF GENERAL SERVICES</p> </div>
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

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 PROJECT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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 (hereinafter the "Board"), represented by the President of the Board, 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 desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the Marysville Ring Levee (a separable element of the Authorized Project and hereinafter the "*Project*", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 103(l) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213(l)) authorizes the Secretary of the Army to permit a non-Federal interest to delay the initial payment of a non-Federal contribution under Section 101 and Section 103 of Water Resources Development Act of 1986, Public Law 99-662, for up to one year after the date when construction is begun on the project for which such contribution is to be made and any amount delayed shall be subject to interest charges for up to six months at a rate determined pursuant to Section 106 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2216);

WHEREAS, on April 3, 2009, the Assistant Secretary of the Army for Civil Works approved a delay of up to one year, of the Non-Federal Sponsors' additional cash contribution for the *Project*, above the 5 percent cash required by Section 103(a)(1)(A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213(a)(1)(A)), pursuant to Section 103(l) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(l));

WHEREAS, the Non-Federal Sponsors do not qualify for a reduction of the non-Federal cost share for flood control pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(m));

WHEREAS, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the Authorized Project and sets forth procedures for adjusting such maximum amount;

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated June 13, 2000, for engineering and design of the Authorized Project (hereinafter the "Design Agreement"), under the terms of which the non-Federal interest contributed a portion of the costs for engineering and design;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; 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 Sponsors through a mutually developed formal strategy of commitment and communication embodied herein, which creates 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 as follows:

#### ARTICLE I - DEFINITIONS

A. The term "Project" shall mean the construction of approximately four miles of slurry walls, seepage berms and base widening along the ring levee in the vicinity of Marysville, California, as generally described in the Yuba River Basin, California, Marysville Ring Levee

Project, Engineering Documentation Report, dated April 12, 2010, and approved by Commander, South Pacific Division on June 4, 2010.

B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during construction; the Non-Federal Sponsors’ and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government’s actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the Government’s supervision and administration costs; the Non-Federal Sponsors’ and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement; and the Non-Federal Sponsors’ and the Government’s costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.G.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government’s costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsors’ costs of negotiating this Agreement.

C. The term “*period of construction*” shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Project* or commences construction of the *Project* using the Government’s own forces, whichever is earlier, to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term “*financial obligations for construction*” shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term “*non-Federal proportionate share*” shall mean the ratio of the Non-Federal Sponsors’ total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement to *financial obligations for construction*, as projected by the Government.

F. The term “*non-Federal proportionate share related to Article II.B.1.*” shall mean the ratio of the Non-Federal Sponsors’ total contribution of funds required by Article II.B.1. of this Agreement to *financial obligations for construction*, as projected by the Government.

G. The term “*non-Federal proportionate share related to Article II.B.3.*” shall mean the ratio of the Non-Federal Sponsors’ total contribution of funds required by Article II.B.3. of this Agreement to *financial obligations for construction*, as projected by the Government.

H. The term “*highway*” shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

I. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

J. The term “*functional portion of the Project*” shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

K. The term “*betterment*” shall mean a difference in the construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

L. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

M. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsors, expeditiously shall construct the *Project* (including alteration, lowering, raising, or



replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the Non-Federal Sponsors have confirmed in writing their willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsors.

4. Notwithstanding paragraph A.2. of this Article, if the award of any contract for construction of the *Project*, or continuation of construction of the *Project* using the Government's own forces, would result in *total project costs* exceeding \$110,000,000 the Government and the Non-Federal Sponsors agree to defer award of that contract, award of all remaining contracts for construction of the *Project*, and continuation of construction of the *Project* using the Government's own forces until such time as the Government and the Non-Federal Sponsors agree in writing to proceed with further contract awards for the *Project* or the continuation of construction of the *Project* using the Government's own forces, but in no event shall the award of contracts or the continuation of construction of the *Project* using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction of the *Project* using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsors, may award a contract or contracts, or continue with construction of the *Project* using the Government's own forces.

B. The Non-Federal Sponsor shall contribute a minimum of 35 percent, but not to exceed 50 percent of *total project costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsors shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsors shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

3. The Non-Federal Sponsors shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsors' required minimum share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required minimum share: (a) the value of the Non-Federal Sponsors' contributions under paragraph B.1. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement.

4. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsors any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total project costs*: (a) the value of the Non-Federal Sponsors' contributions under paragraph B.3. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsors. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

C. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsors copies of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsors with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsors, and the Government and the Non-Federal Sponsors shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsors.

D. Upon notification from the District Engineer in accordance with paragraph C. of this Article, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

E. Upon conclusion of the *period of construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsors.

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 Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

G. The Non-Federal Sponsors may request the Government to perform or provide, on behalf of the Non-Federal Sponsors, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to



enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

H. Not less than once each year the Non-Federal Sponsors shall inform affected interests of the extent of protection afforded by the *Project*.

I. The Non-Federal Sponsors agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

J. The Non-Federal Sponsors shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Non-Federal Sponsors shall provide an information copy of the plan to the Government upon its preparation.

K. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

L. The Non-Federal Sponsors shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

### ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of

dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsors shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of

dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsors' share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsors must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsors must perform or for which they must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsors must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* 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.

B. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement

and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provide the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and the Government. The Non-Federal Sponsors shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsors provide the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, the Non-Federal Sponsors choose not to obtain a second appraisal, or the Non-Federal Sponsors do not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.



3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsors shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsors for items that

are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsors in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsors must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsors, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is

subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsors pursuant to Article II.G.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsors in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsors in accordance with the terms and conditions agreed upon in writing pursuant to Article II.G.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

#### ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsors and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable

the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsors' costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsors current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-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.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$92,500,000; the Non-Federal Sponsors' contribution of funds required by Article II.B.1. of this Agreement is projected to be \$4,625,000; the Non-Federal Sponsors' contribution of funds required by Article II.B.3. of this Agreement is projected to be \$24,317,000; the *non-Federal proportionate share* is projected to be 32.5 percent; the Non-Federal Sponsors' contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0.00; the value included in *total project costs* for lands, easements, rights-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 \$3,433,000; 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 \$0.00. These amounts and percentage are estimates



subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

2. By November 1, 2010 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsors' contribution of funds required by Article II.B.1. of this Agreement; the Non-Federal Sponsors' contribution of funds required by Article II.B.3. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsors' total contribution of funds required by Article XVII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming *fiscal year*; the portion of the contribution of funds required by Article II.B.3. of this Agreement delayed and the applicable interest; the maximum amount determined in accordance with Article XX of this Agreement; the value included in *total project costs* for lands, easements, rights-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; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement.

B. The Non-Federal Sponsors shall provide the contributions of funds required by Article II.B.1., Article II.B.3., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *Project* or the scheduled date for commencement of construction of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and of the funds the Government determines to be required from the Non-Federal Sponsors, and the Non-Federal Sponsors shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall determine the funds to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the projected *non-Federal proportionate share related to Article II.B.1. 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 related to Article II.B.1. of financial obligations for construction* through the first quarter and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. 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 Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement through the first quarter. Not later than such scheduled date, the Non-Federal Sponsors shall provide the Government with the full amount of such

required funds by delivering a check payable to "FAO, USAED, Sacramento District L2" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, 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.

b. The Government shall determine the funds to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the *non-Federal proportionate share related to Article II.B.3. of financial obligations for construction* incurred prior to the commencement of the *period of construction* and (b) the projected *non-Federal proportionate share related to Article II.B.3. of financial obligations for construction* to be incurred in the first *fiscal year* or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share related to Article II.B.3. of financial obligations for construction* through the first *fiscal year*; and (c) the applicable interest calculated in accordance with paragraph B.1.c. of this Article. Not later than the first anniversary of the date the Government awards the first contract for construction of the *Project* or the date of commencement of construction of the *Project* using the Government's own forces, the Non-Federal Sponsors shall provide the Government with the full amount of such required funds through any of the payment mechanisms specified in paragraph B.1.a. of this Article.

c. The interest payment required by paragraph B.1.b. of this Article shall be calculated on the amount of *non-Federal proportionate share related to Article II.B.3. of financial obligations for construction* required by paragraph B.1.b. of this Article for a period of six months, using an interest rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to six months during the month preceding the *fiscal year* in which the Government awards the first contract for construction of the *Project* or commences construction of the *Project* using the Government's own forces, plus a premium of one-eighth of one percentage point for transaction costs.

2. Thereafter, until the construction of the *Project* is complete, the Government shall notify the Non-Federal Sponsors in writing of the funds the Government determines to be required from the Non-Federal Sponsors, and the Non-Federal Sponsors 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 XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsors 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 Non-Federal Sponsors, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the

Design Agreement, to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* for that quarter for such continuing contract and (b) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement for that quarter for such continuing contract. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsors 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.a. 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 XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsors 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 Non-Federal Sponsors, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract and (b) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1.a. 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 XVII.B.3. of this Agreement using the Government's own forces, the Government shall notify the Non-Federal Sponsors 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 Non-Federal Sponsors, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement, 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 Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. 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 Non-Federal Sponsors 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.a. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement, 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 Non-Federal Sponsors' share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' share of such financial obligations in the current quarter, the Government shall notify the Non-Federal Sponsors 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 Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1.a. of this Article.

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsors' total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total contributions provided thereto, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Sacramento District L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsors for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total required shares thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. However, the Non-Federal Sponsors shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.B.1. of this Agreement. In the event the Non-Federal Sponsors are due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.



D. The Non-Federal Sponsors shall provide the contribution of funds required by Article II.G. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsors to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1.a. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsors must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1.a. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsors with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsors' contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsors for such additional work, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Sacramento District L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsors for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsors are due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.C. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsors, pursuant to Article II.D. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter own or control for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsors for any reason are failing to perform their obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsors continue to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter own or control for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall

relieve the Non-Federal Sponsors of responsibility to meet the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE IX – HOLD AND SAVE

Subject to the provisions of Article XXI of this Agreement, the Non-Federal Sponsors shall hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsors shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsors shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsors shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsors in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to



the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsors in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsors elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsors determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsors agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsors on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsors to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsors reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsors provide funds necessary to pay for cleanup and response costs and otherwise discharges their responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.B.1., Article II.B.3., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

## ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsors shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsors for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs

shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsors do not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fail to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsors and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsors:

President of the Board  
State of California  
The Central Valley Flood Control Board  
3310 El Camino Ave., Suite LL40  
Sacramento, California 95825

President of the Board  
Marysville Levee Commission, California  
P.O. Box 150  
Marysville, California 95901

If to the Government:

District Engineer  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsors and the Government consistent with the minimum cost sharing requirements for flood risk management, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsors discover historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsors shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsors shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsors that they should proceed with such work.

#### ARTICLE XVIII - 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.

#### ARTICLE XIX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsors, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

#### ARTICLE XX - SECTION 902 MAXIMUM COST OF PROJECT

A. The Non-Federal Sponsors understand that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of total costs for the Authorized Project, of which the *Project* is a separable element. On the effective date of this Agreement, the maximum amount of total costs for the Authorized Project, which is the sum of *total project costs* for the *Project* and the costs for all other separable elements of the Authorized Project, is estimated to be \$147,390,000 as calculated in accordance with Engineer Regulation 1105-2-100, using October 1, 2010 price levels, and including allowances for projected future inflation. The Government shall adjust such maximum amount of total costs for the Authorized Project, in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), when necessary.

B. Notwithstanding any other provision of this Agreement, the Government shall not incur a new financial obligation or expenditure for the *Project*, or include in *total project costs* for the *Project* any additional contribution provided by the Non-Federal Sponsors, if such obligation, expenditure or additional contribution would cause the sum of cumulative project costs for the *Project* and the cumulative costs for all other separable elements of the Authorized Project to exceed such maximum total costs for the Authorized Project, unless otherwise authorized by law.



ARTICLE XXI - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California, where creating such an obligation would be inconsistent with Section 1 and Section 18 of Article XVI of the California Constitution.

B. The Non-Federal Sponsors intend to fulfill their obligations under this Agreement. The Non-Federal Sponsors shall include in their budget requests or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsors reasonably believe that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsors shall use their best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

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

DEPARTMENT OF THE ARMY

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

DATE: 21 Jul 10

THE STATE OF CALIFORNIA

BY: *Benjamin F. Carter*  
Benjamin F. Carter  
President of the Board  
The Central Valley Flood Protection Board

DATE: 7/14/10

MARYSVILLE LEVEE DISTRICT, CALIFORNIA

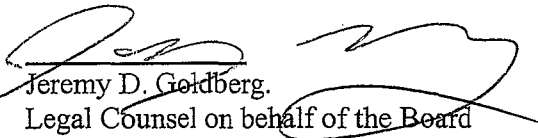
BY: *Patrick H. Ajuria*  
Patrick H. Ajuria  
President of the Board  
MARYSVILLE LEVEE COMMISSION

DATE: 7/6/2010

CERTIFICATE OF AUTHORITY

I, Jeremy D. Goldberg,, do hereby certify that I am the principal legal officer for this project of the Central Valley Flood Protection Board ("Board"), 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 between the Department of the Army, the State of California, The Central Valley Flood Protection Board, and the Marysville Levee District, California in connection with the Marysville Ring Levee Project (a separable element of the Yuba River Basin 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  
13 day of July 2010.

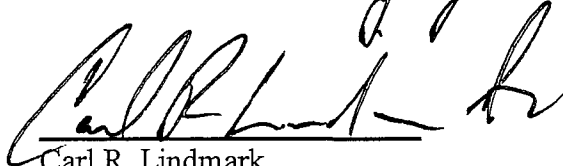
  
Jeremy D. Goldberg.  
Legal Counsel on behalf of the Board  
State of California  
Department of Water Resources

CERTIFICATE OF AUTHORITY

I, Carl R. Lindmark, do hereby certify that I am the principal legal officer 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 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 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

6th day of July 20 10.



Carl R. Lindmark  
Legal Counsel  
Marysville Levee District, California



CERTIFICATION REGARDING LOBBYING

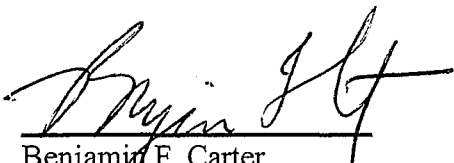
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

(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 of the Board  
State of California  
The Central Valley Flood Protection Board

DATE: 7/14/10

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.



Patrick H. Ajuria  
President of the Board  
Marysville Levee Commission

DATE: 7/6/2010

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AMENDMENT NUMBER 1  
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 PROJECT

THIS AMENDMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works) (hereinafter the “Secretary”), and the State of California acting by and through the Central Valley Flood Protection Board (hereinafter the “Board”), represented by the President of the Board, and 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 (Agreement) on July 21, 2010 for construction of the Marysville Ring Levee (a separable element of the Authorized Project);

WHEREAS, the Government and the Non-Federal Sponsors desire to amend the Agreement to include Reach 1 (a separable element of the Authorized Project) determined by the Secretary to be integral to the Authorized Project within the scope of the “*Project*” as defined in Article I.A. of the Agreement;

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 (a) (4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b (a) (4)), toward the Non-Federal Share of the cost of the Authorized Project, work carried out prior to the execution of the Agreement;

WHEREAS, on February 12, 2014, the Secretary determined that the construction of parts of the Upper Yuba Levee Improvement Project is integral to Reach 1 of the Authorized Project, as

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defined in accordance with Section 221 of the Flood Control Act of 1970, and is thereby creditable pursuant to Section 3041 of the Water Resources Development Act of 2007;

WHEREAS, the Government and the Non-Federal Sponsors desire to amend the Agreement to provide credit for the portions of Reach 1 (a separable element of the Authorized Project) determined by the Secretary of the Army to be transferred between separable elements of the Authorized Project pursuant to Section 3041 of the Water Resources Development Act of 2007;

WHEREAS the Non-Federal Sponsor has requested that the Government credit toward the Non-Federal Sponsors' contribution of funds required for the *Project*, \$42,827,000, pursuant to Section 3041 of the Water Resources Act of 2007;

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

1. ARTICLE I – DEFINITIONS is amended as follows:

a. Paragraph A. is amended by adding the following sentence at the end of the paragraph: “The term includes the flood control features constructed in Reach 1 of the Authorized Project as defined in the Post Authorization Documentation Report as follows: Reach 1 (Linda/Olivehurst) includes the levees along the left bank of the Yuba River from the Goldfields to the confluence with the Feather River and along the left bank of the Feather River from the Yuba River confluence to PLM 20.0.

b. Paragraph B. is amended as follows:

i. By inserting the phrase “the amount of credit that the Government affords for *in-kind contributions* in accordance with Article II.B.6. of this Agreement;” after the phrase “actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto;” and before the phrase “supervision and administration costs.”

ii. By adding the following after the first sentence of the paragraph: “The term shall not include noncreditable or uncredited costs incurred by the Non-Federal Sponsors related to construction of the Project.”

c. Paragraph D. is amended by replacing the existing provision with the following:

“The term “*financial obligations for construction*” shall mean the financial obligations of the Government and the costs for the *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.”

d. Paragraph E. is amended by replacing the existing provision with the following:

“The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total project costs* for the *in-kind contributions*, as determined by the Government,

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and the Non Federal Sponsor's total contribution of funds required by Article II.B.1. and Article II.B.3. of this agreement to *financial obligations for construction*, as projected by the Government.”

- e. Paragraph F. is amended by replacing the existing provision with the following:

“F. The term “*non-Federal proportionate share related to Article II.B.1.*” shall mean the ratio of the sum of the costs included in *total project costs* for the *in-kind contributions*, as determined by the Government, and the Non Federal Sponsor's total contribution of funds required by Article II.B.1. of this agreement to *financial obligations for construction*, as projected by the Government.”

- f. Paragraph G. is amended by replacing the existing provision with the following:

“G. The term “*non-Federal proportionate share related to Article II.B.3.*” shall mean the ratio of the sum of the costs included in *total project costs* for the *in-kind contributions*, as determined by the Government, and the Non Federal Sponsor's total contribution of funds required by Article II.B.3. of this agreement to *financial obligations for construction*, as projected by the Government.”

- g. Article I is amended by inserting the following additional paragraphs at the end thereof:

“N. The term “*in-kind contributions*” shall mean the amount of credit to be afforded for construction of eligible integral features along the Yuba River carried out on or before 2009 (as generally described in the Yuba River Basin, California, Integral Determination Report) and approved by the Assistant Secretary of the Army (Civil Works) *t* on February 12, 2014.”

2. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS is amended as follows:

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 “\$152,039,049.”

c. Paragraph B.1. is amended by inserting, “None of the credit to be afforded pursuant to paragraph B.6. of this Article may be used to fulfill this requirement.” at the end of the provision.

- d. Paragraph B.3. is amended by replacing the existing provision 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 *total project costs*, the Government shall determine the amount of funds that would be necessary to make the Sponsors' total contribution equal to 35



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percent of *total project costs*. This determination shall be made prior to the Government affording credit pursuant to paragraph B.6. of this Article.

b. The Sponsors shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount determined in accordance with paragraph B.3.a. of this Article reduced by the amount of credit the Government affords pursuant to paragraph D.6. of this Article.”

e. Paragraph B.4. is amended by deleting the “and” before “(d)” in the first sentence of the paragraph and by adding the following to the end of the first sentence of the paragraph: “and (e) the amount of the credit afforded for the *in-kind contributions* pursuant to paragraph B.6. of this Article.”

f. Article II is amended by inserting the following additional paragraphs after Paragraph B.4.:

“5. The Government shall determine, in accordance with the conditions and limitations of this paragraph, the amount of the costs for *in-kind contributions* that may be eligible for credit and that have been found to be integral to the Authorized Project (See Integral Determination dated February 12, 2014) or have received prior ASA approval to proceed with work .

a. The Non-Federal Sponsors will provide the Government with *Non-Federal Sponsors’ credit request(s)* to support crediting requests submitted in accordance with the Integral Determination Report, approved February 12, 2014.

b. The Non Federal Sponsors’ costs for *in-kind contributions* that may be eligible for credit pursuant to his agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Non Federal Sponsors’ costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* were or are completed and the time the credit is afforded.

d. None of the costs for *in-kind contributions* paid by the Non Federal Sponsors using *Federal program funds* are eligible for credit pursuant to 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*.

e. Costs for *in-kind contributions* that are in excess of the Government’s estimate of the costs for the Government to have performed or provided such work or materials are not eligible for credit pursuant to this Agreement.

f. Costs for *betterments*, the provision of lands, easements, rights-of-way, *relocations*, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are not eligible for credit as *in-kind contributions*.

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g. In the performance of the construction portion of the *in-kind contributions*, the Non Federal Sponsors must comply with applicable Federal labor laws covering Non Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Government may determine that costs for the construction portion of the *in-kind contributions*, in whole or in part, are not be eligible for credit pursuant to this Agreement, as a result of the Non Federal Sponsors' failure to comply with its obligations under these laws.

h. Costs for *in-kind contributions* are not eligible for credit pursuant to this Agreement unless the Government determines through a review or on-site inspection, as applicable, performed by the Government that the work was accomplished in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government and the provisions of this Agreement.

i. No costs for *in-kind contributions* performed prior to compliance with all applicable environmental laws and regulations covering such work, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. §1251-1387, 200b) are eligible for credit pursuant to this Agreement.

j. No costs for *in-kind contributions* that were obtained without cost to the Non-Federal Sponsor are eligible for credit pursuant to this Agreement.”

6. The Government, in accordance with this paragraph, shall afford credit in the amount of \$42,827,000 toward the amount of funds determined in accordance with paragraph B.3.b. of this Article for the costs of the *in-kind contributions* determined in accordance with paragraph B.5. 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. The District Engineer and Non Federal Sponsor 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. However, the maximum amount of credit afforded shall not exceed the lesser of the following amounts as determined by the Government: (a) the amount of funds determined in accordance with paragraph B.3.b. of this Article; or (b) the costs of the *in-kind contributions* determined in accordance with paragraph B.5. of this Article.

7. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be reimbursed for any value of the Non-Federal Sponsors' contributions under paragraph B.3. of this Article as determined in accordance with Article IV of this Agreement that exceeds 50 percent of *total project costs*.”

3. Article IV – CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS is amended as follows:

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a. Paragraph A. fifth sentence, is amended by striking the current sentence and replacing it with the following:

“In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the *Project*.”

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

“1. Date of Valuation.

a. The fair market value of lands, easements, or rights-of-way owned by the Non Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non Federal Sponsor provides the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non Federal Sponsor on the effective date of this Agreement that are required for the *in-kind contributions*, fair market value shall be the value of such real property interests as of the date the Non Federal Sponsor awards the first construction contract for the *in-kind contributions*, or, if the Non Federal Sponsor performs the construction with its own forces, the date that the Non Federal Sponsor begins construction of the *in-kind contributions*.

b. The fair market value of lands, easements, or rights-of-way acquired by the Non Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.”

4. Article VI – METHOD OF PAYMENT is amended as follows:

a. Paragraphs A. and A.1. – A.2. are amended by striking the current paragraphs and replacing them with the following paragraphs A. and A.1. – A.2.:

“A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-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, and the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.D.5. and Article II.E.5. of this Agreement.

1. As of the effective date of Amendment No.1. to this Agreement, total project costs are projected to be \$152,039,049. The Non-Federal Sponsor’s cash contribution of funds required by Article II.B.1 of this Agreement is projected to be \$7,601,952 (5% of \$152,039,049); the Non-Federal Sponsor’s contribution of funds

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required by Article II.B.3. of this Agreement is projected to be \$53,213,667 (this is 35% of the \$122M); the amount of credit to be afforded for in-kind contributions pursuant to Article II.B.6. is expected to be \$24,833,715; the non-Federal proportionate share is projected to be 35 percent; the Non-Federal Sponsor's 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, rights-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 Sponsor's 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 Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By July 1, 2010 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.B.3. of this Agreement; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsors' total contribution of funds required by Article XVII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming *fiscal year*; the maximum amount determined in accordance with Article XX of this Agreement; the value included in *total project costs* for lands, easements, rights-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; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.G. of this Agreement."

b. Paragraph B. is amended by striking "Article II.B.3.," and replacing it with "Article II.B.3.b.,".

c. Paragraph B.2.a. is amended by inserting the phrase, ",after consideration of the credit amount the Government affords pursuant to article II.B.6. of this Agreement," after "consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement," and before "to meet:".

d. Paragraph B.2.b. is amended by inserting the phrase, ",after consideration of the credit amount the Government affords pursuant to article II.B.6. of this Agreement," after "consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement," and before "to meet:".

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e. Paragraph B.2.c. is amended by inserting the phrase, “, after consideration of the credit amount the Government affords pursuant to article II.B.6. of this Agreement,” after “consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement,” and before “to meet:”.

5. 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 District Engineer.

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

BY: \_\_\_\_\_

BY: \_\_\_\_\_

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

MARYSVILLE LEVEE DISTRICT

BY: \_\_\_\_\_



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CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, 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 between the Department of the Army, the State of California and the Board in connection with the Mid-Valley Area – Phase III Levee Reconstruction 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 \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Robin Brewer  
Legal Counsel  
State of California, Department of Water Resources

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

I, Jay S. Punia, do hereby certify that I am the Financial 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 State of California Separable Elements, Area 2, Area3 & Area 4 of the Mid-Valley Area – Phase III Levee Reconstruction Project California; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Amendment Number 1 to the Project Cooperation Agreement Between the Department of the Army and the State of California Separable Elements, Area 2, Area3 & Area 4 of the Mid-Valley Area – Phase III Levee Reconstruction Project California.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of

\_\_\_\_\_.

BY: \_\_\_\_\_

Leslie Gallagher  
Acting Executive Officer

DATE: \_\_\_\_\_

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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.

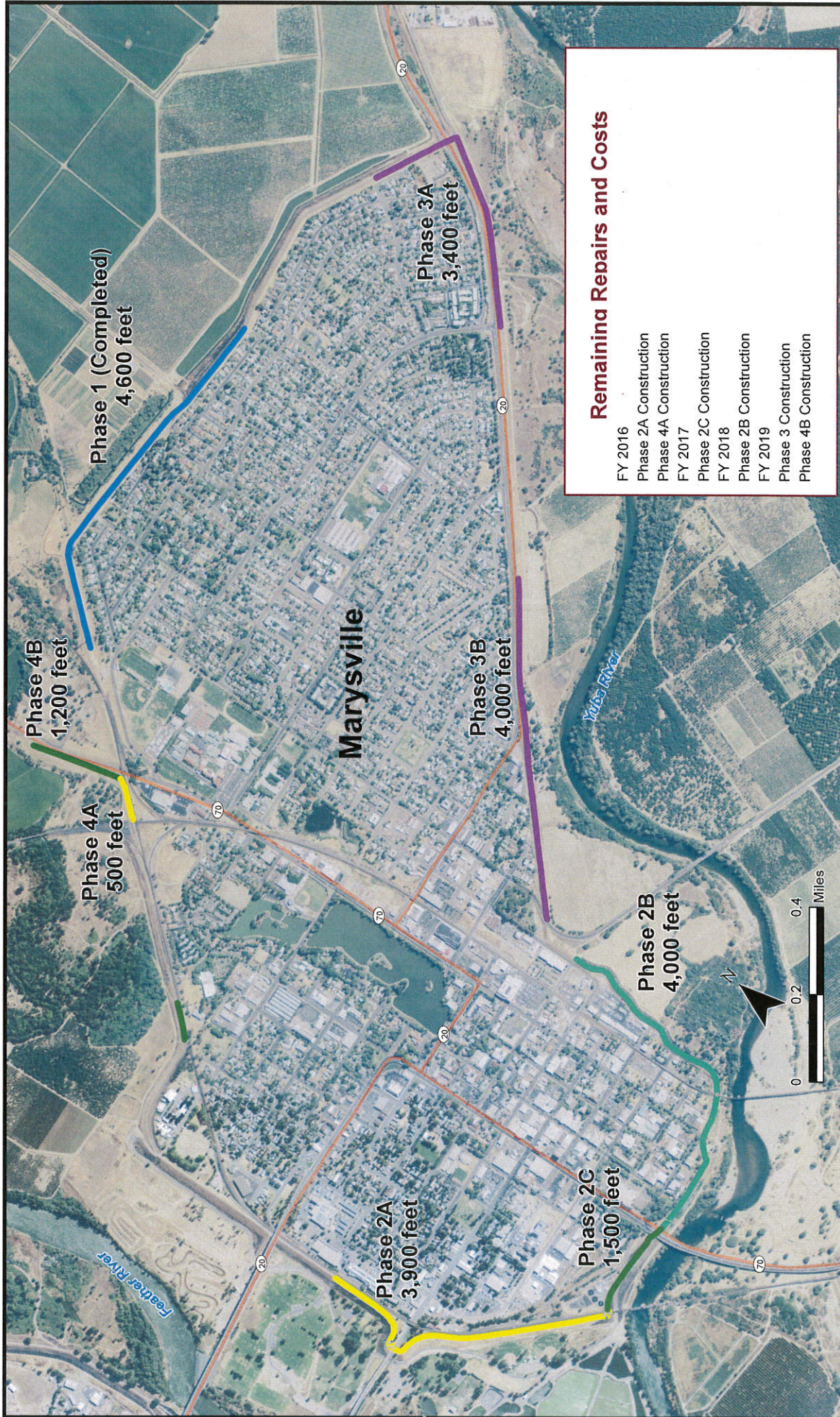
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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: \_\_\_\_\_





Yuba River Basin, California  
 Marysville Ring Levee Project  
 August 2015

**Marysville Ring Levee Repair Schedule**

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