

Meeting of the Central Valley Flood Protection Board

June 22, 2012

Staff Report

Amendment No. 2 to the Design Agreement

Between the Department of the Army and the State of California

for the

Hamilton City Flood Damage Reduction and Ecosystem Restoration Project

1.0 – ITEM

Consider approval of Resolution No. 2012-12 to:

1. Approve the United States Army Corps of Engineers' (USACE) Schedule and Cost Change Request (SACCR), which will be considered Amendment No. 2 to the Design Agreement between the USACE and the State of California, to increase the total design cost from \$3,358,000 to \$3,762,000 and increase the non-federal share from \$839,500 to \$940,500; and
2. Delegate to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto.

2.0 – PROJECT SPONSORS

Federal: U.S. Army Corps of Engineers, Sacramento District
State: The Central Valley Flood Protection Board (Board)
The Nature Conservancy
Local: Reclamation District 2140

3.0 – LOCATION

The Hamilton City Flood Damage and Ecosystem Restoration Project (Hamilton City Project) is located along the west bank of the Sacramento River in Hamilton City, Glenn County, California. It is approximately 80 miles north of Sacramento and 10 miles west of Chico. See the map in Attachment A.

4.0 – DESCRIPTION

The Hamilton City Project has two objectives; flood risk reduction and ecosystem restoration. The flood risk reduction component will construct 6.8 miles of setback levee

and remove the existing levee to increase Hamilton City's flood protection from a 10-year level of protection to a 75-year level of protection. The ecosystem restoration component will restore about 1,500 acres of native habitat between the setback levee and the Sacramento River.

5.0 – PROJECT ANALYSIS

5.1 – Project Background

The Central Valley Flood Protection Board (Board) and the Department of the Army, through the U.S. Army Corps of Engineers (USACE), entered into a Preconstruction Engineering and Design Agreement (PED) on December 13, 2005, for the design of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project (Hamilton City Project). The design costs are shared at a ratio of 75 percent federal/25 percent non-federal. Amendment No. 1 to the PED allowed USACE to spend non-federal sponsor funds in excess of available federal funds.

The Nature Conservancy (TNC) is the lead agency for acquiring land and performing all related work in acquiring the necessary lands for the Hamilton City Project. Per an agreement signed in October 2001, the Department of Water Resources (DWR) will provide \$5,000,000 to TNC for this work.

The USACE will contract with Reclamation District 2140 (RD 2140), not the State, for the construction phase because the project area is located outside of the State Plan of Flood Control. RD 2140 applied for a grant through DWR's Flood Corridor Program to receive \$5,000,000 in State funds to pay for utility relocations, climate analysis, project administration, and their non-federal cost-share of construction costs. The application has been approved and the contract is being prepared.

USACE determined that a Limited Re-evaluation Report (LRR) was needed to reevaluate the economic impacts of required design changes for a portion of the Hamilton City Project. This additional work increased the total project cost by \$404,000, resulting in an increase of \$101,000 for the non-federal share. The USACE must balance their use of funds equally between the federal and non-federal shares and cannot expend federal funds without the matching non-federal funds. After the payment of \$101,000 is received by USACE, the State's non-federal obligation will be met under the PED agreement.

Combining the two objectives in the Hamilton City Project increased the benefit/cost ratio and was the best way to provide economically justified flood risk reduction. The

Hamilton City Project was in the President's Budget to receive \$8 million in construction funds for federal Fiscal Year (FY) 2012, but Congress removed the allocation from the final federal budget. For FY 2013, the Hamilton City Project was listed in the President's Budget to receive \$7.5 million for construction and recommended by the Senate as a new construction start. The FY 2013 budget is scheduled to be finalized by October 1, 2012.

5.2 – Board Actions

June 19, 1998	Approved the letter of intent to USACE to become the non-federal sponsor of the Feasibility Study.
February 19, 1999	Approved a resolution to enter into a feasibility cost-sharing agreement (FCSA) between the Board and USACE and a local feasibility cost-sharing agreement (LFCSA) between the Board and Glenn County.
September 20, 2002	Approved a request from the local sponsor (Glenn County) to suspend the FCSA and LFCSA. The local sponsor elected to have the Hamilton City Project included as an initial project in the Sacramento and San Joaquin River Basins Comprehensive Study.
July 16, 2004	Certified and adopted the findings for the Hamilton City Flood Damage Reduction and Ecosystem Restoration Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and approved the project.
June 30, 2006	Approved Amendment 1 to the Design Agreement between USACE and the Board to allow USACE to spend non-federal sponsor funds in excess of available federal funds.

5.3 – Project Benefits

The primary benefits of the Hamilton City Project are

- The level of protection for Hamilton City will increase from a 10-year level of protection to a 75-year level of protection
- Approximately 1,500 acres of riparian habitat will be restored

5.4 – Staff Analysis

USACE Headquarters will not release construction funds until the LRR is complete. If the Hamilton City Project is delayed and the LRR is not completed by the end of FY 2012, construction funding will not be allocated for FY 2013 and there is a risk that the Hamilton City Project will not be listed as a new construction start in the FY 2014 President's Budget.

Delay in construction funding would also affect the contract between DWR and RD 2140. Federal construction funding must be allocated to the Hamilton City Project before DWR can make payments to RD 2140 under the new grant. If federal funding is delayed, the contract will still be valid, but the funds will be held for two to three years. The grant would be cancelled or extended, but delays in the Hamilton City Project ties up \$5,000,000 that could be used for other projects that are ready to be constructed.

Approval of the SACCR will allow the LRR to be completed without any delay to the Hamilton City Project. If the State does not pay its additional non-federal share of \$101,000 to USACE prior to the end of FY 2012, the Hamilton City Project will be shut down then restarted when non-federal funding is received. This shut down and restart process will add unnecessary costs and time to the project, further delaying construction funding and impeding project progress.

6.0 – AUTHORIZATIONS

Federal: Flood Control Act of 1962; Consolidated Appropriations Act for 2005, Public Law 108-447; Section 1001 (8) of the Water Resources Development Act (WRDA) of 2007.

State: California Water Code Section 12670.23

7.0 – STAFF RECOMMENDATION

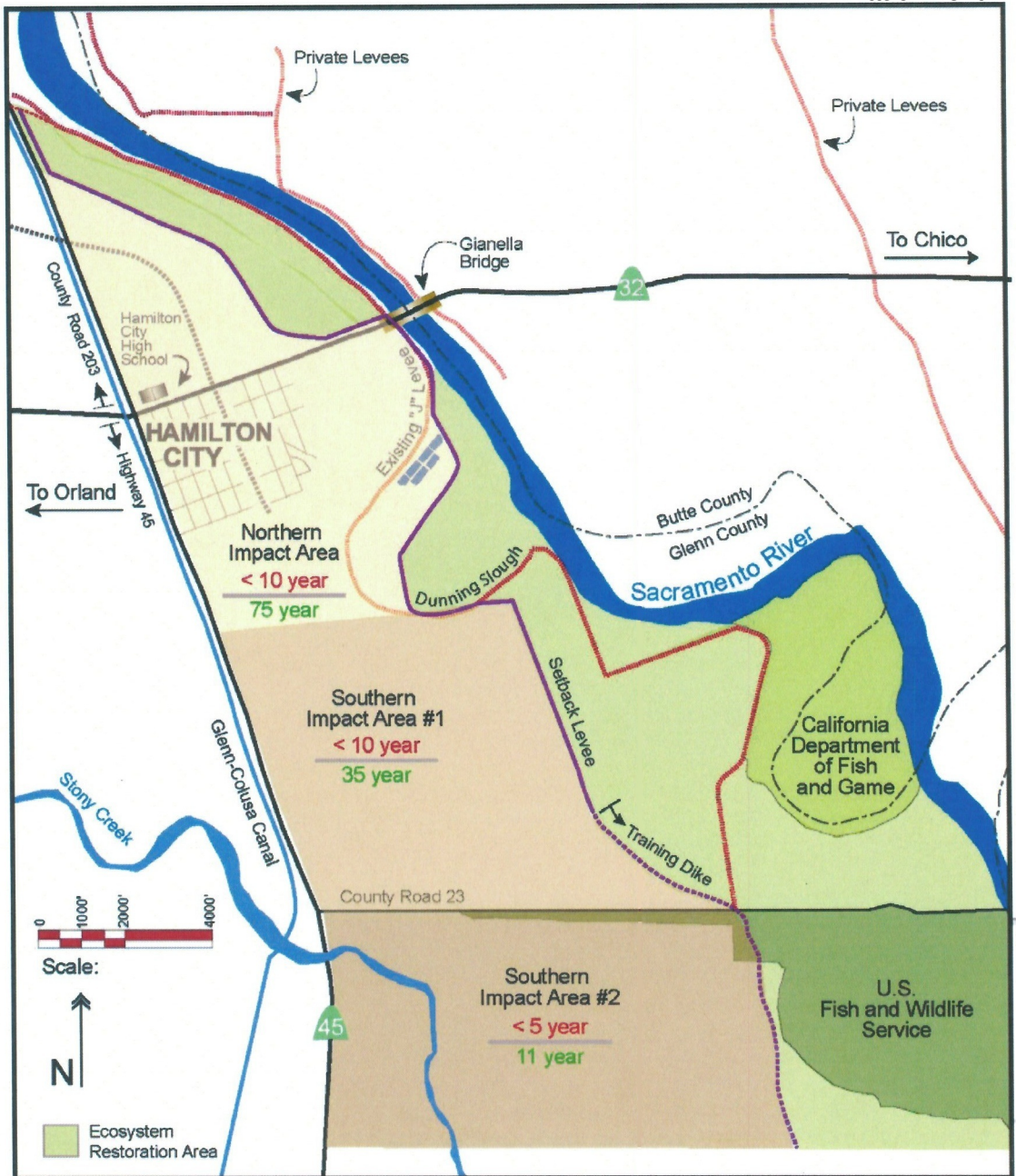
Staff recommends approval of Resolution No. 2012-12 to:

1. Approve the United States Army Corps of Engineers' (USACE) Schedule and Cost Change Request (SACCR), which will be considered Amendment No. 2 to the Design Agreement between the USACE and the State of California, to increase the total design cost from \$3,358,000 to \$3,762,000 and increase the non-federal share from \$839,500 to \$940,500; and

2. Delegate to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto.

8.0 – LIST OF ATTACHMENTS

- A. Project map
- B. Resolution 2012-12
- C. USACE Schedule and Cost Change Request (SACCR)
- D. Design Agreement between USACE and the Board
- E. Design Agreement, Amendment 1 between USACE and the Board



Hamilton City Flood Risk: Conditional Non-Exceedance Probability
(Measures 90% probability of surviving a specific event)

Red Without the Project
Green With the Project

Existing levee to be removed
New setback levee

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

RESOLUTION NUMBER 2012-12

AMENDMENT NO. 2
TO THE
DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
FOR THE DESIGN OF
THE HAMILTON CITY FLOOD DAMAGE REDUCTION
AND ECOSYSTEM RESTORATION PROJECT, CALIFORNIA

WHEREAS, on December 13, 2005, the Reclamation Board, now known as the Central Valley Flood Protection Board, and the U.S. Army Corps of Engineers entered into a Design Agreement for the design of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project (Hamilton City Project); and

WHEREAS, the U.S. Army Corps of Engineers is the federal sponsor and the Central Valley Flood Protection Board is the non-federal sponsor for the Design Agreement; and

WHEREAS, due to significant changes in project design, U.S. Army Corps Engineers determined that a Limited Reevaluation Report was required; and

WHEREAS, via a Schedule and Cost Change Request, the U.S. Army Corps of Engineers notified the Central Valley Flood Protection Board that the additional expenses required to complete the Limited Reevaluation Report have raised the total design cost from \$3,358,000 to \$3,762,000 and increase the non-federal share from \$839,500 to \$940,500; and

WHEREAS, the U.S. Army Corps of Engineers requested the Central Valley Flood Protection Board to acknowledge the Schedule and Cost Change Request; and

WHEREAS, the significant changes in project design and increase in costs do not change the scope of the Hamilton City Project; and

WHEREAS, approval of this resolution will allow the Central Valley Flood Protection Board to issue funds to the U.S. Army Corps of Engineers to maintain the Hamilton City Project schedule.

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

1. Approves the United States Army Corps of Engineers' (USACE) Schedule and Cost Change Request (SACCR), which will be considered Amendment No. 2 to the Design Agreement between the USACE and the State of California, to increase the total design cost from \$3,358,000 to \$3,762,000 and increase the non-federal share from \$839,500 to \$940,500; and
2. Delegates to the Central Valley Flood Protection Board President the authority to execute Amendment No. 2 in substantially the form attached hereto.

BY: _____
William Edgar
President

Date: _____

BY: _____
Jane Dolan
Board Secretary

Date: _____

Approved as to Legal Form and Sufficiency

Jeremy Goldberg
Staff Counsel

Schedule and Cost Change Request (SACCR)

Alternate Eng. Form 5040-1-R

Project: Hamilton City Flood Damage Reduction & Ecosystem Restoration Limited Re-evaluation Report		SACCR #1	
		Date 11 APR 2012	
From CESPK-PM-C	To CESPK-DD-P	Project Manager: Tom Karvonen	Phone 916-557-7630
		Signature _____	Date _____
Section I - Request			
<p>Description of Change Request: Due to significant changes to the project design during the PED phase, including raising of portions of the levee and changes to interior drainage, as well as questions regarding suitability of certain facility's cost allocation an LRR was determined to be required by the PDT.</p> <p>The scope, schedule, and budget will be reviewed periodically and revised if necessary during the course of the PED phase.</p> <p>Justification for Change: The additional expenses required to complete the LRR have raised the PED cost from \$3,358,000 to \$3,762,000 with the non-Federal share rising from \$839,500 to \$940,500. To date, there have been no further changes to the scope of the study.</p>			
Section II - Impact Assessment			
Organization	Description		
All Project Delivery Team Members (Federal & Non-Federal)	Completing the Limited Reevaluation Study to properly update the economic analysis for the project and properly allocated costs between Flood Risk Management and Ecosystem Restoration according to direction by USACEHQ and providing a final report.		
Section III - Project Manager's Evaluation			
Category	Impact	Resources Required	
Cost	+\$101,000	Cash/work in kind	
Schedule	1 year	This is the schedule developed by the PDT	
Manpower	0	PDT members already assigned	

Project: Hamilton City Flood Damage Reduction & Ecosystem Restoration
Limited Re-evaluation Report

SACCR #1

Date 11 APR 2012

Section IV - Coordination with Partner

Partner's Position and Acknowledgement:

Non-Federal and local sponsors supports the continuation of the PED phase and Limited Re-evaluation Report

Signature _____ Date _____

Name: _____

Section V - PRB Action & Resolution

CESPK-DD-P Recommendation and Signature

Signature _____ Date _____

District PRB Recommendation

- ☐ Approval
- ☐ Approval with Modifications
- ☐ Disapproval
- ☐ Returned to PM w/o Action
- ☐ Referred to Division

Reason

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**MODEL AGREEMENT FOR DESIGN
IN ACCORDANCE WITH SECTION 105(c) OF PUBLIC LAW 99-662**

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE RECLAMATION BOARD OF THE STATE OF CALIFORNIA
FOR DESIGN OF THE
HAMILTON CITY FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION
PROJECT, CALIFORNIA

THIS AGREEMENT entered into this 13th day of December, 2005, by and between the Department of the Army (hereinafter the "Government") represented by Colonel Ronald N. Light and The Reclamation Board of the State of California (hereinafter the "Non-Federal Sponsor") represented by Mr. Benjamin Carter, President, The Reclamation Board of the State of California.

WITNESSETH, THAT:

WHEREAS, the Consolidated Appropriations Act for Fiscal Year 2005, Public Law 108-447, included funds for the Government to initiate design (as defined in Article I.B. of this Agreement) of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project (hereinafter the "Project" as defined in Article I.A. of this Agreement) at Hamilton City, California;

WHEREAS, Section 105(c) of Public Law 99-662 (33 U.S.C. Section 2215) [100 Stat 4089] provides that the costs of design of a water resources project shall be cost shared in the same percentage as the purposes of the project;

WHEREAS, the Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor shall contribute 25 percent of the financial obligations for design of the Project;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in paying for design in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

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ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean construction of 6.8 miles of setback levee to provide a more reliable form of flood protection to the community and surrounding areas, degradation of the existing "J" levee to allow for reconnection of the river to the floodplain, and restoration of about 1,500 acres of native habitat between the new setback levee and the Sacramento River; as generally described in the Report of the Chief of Engineers, dated December 22, 2004

B. The term "design" shall mean all activities directly related to planning, engineering and design of the Project for which financial obligations are made during the period of design in accordance with the terms of this Agreement; the final accounting in accordance with Article IV.D. of this Agreement; any audit in accordance with Article VII of this Agreement; and the Government's activities conducted as part of negotiating this Agreement. The term shall not include any activities performed as part of reconnaissance or feasibility studies; activities conducted as part of negotiation of a project cooperation agreement for the Project or separable element thereof; or the Non-Federal Sponsor's activities conducted as part of negotiating this Agreement.

C. The term "total design costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government as a consequence of financial obligations for design. The term includes but is not necessarily limited to, the Government's costs of negotiating this Agreement; applicable planning and evaluation; applicable engineering and design; environmental assessment and documentation; the identification, survey, and evaluation of historic properties; participation in the Design Coordination Team in accordance with Article III of this Agreement; costs of the final accounting in accordance with Article IV.D. of this Agreement; and costs of audit in accordance with Article VII of this Agreement. The term does not include any costs related to betterments; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies; any costs (other than audit) resulting from financial obligations after the period of design; any costs of negotiating a project cooperation agreement for the Project or separable element thereof; or the Non-Federal Sponsor's costs of negotiating this Agreement.

D. The term "period of design" shall mean the time period commencing when Federal General Investigations appropriations for Preconstruction Engineering and Design of the Project are allocated to the U.S. Army Engineer District, Sacramento, and ending when a project cooperation agreement for the Project, or a separable element thereof, is executed between the Government and a non-Federal entity or entities.

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E. The term "District Engineer" shall mean the U.S. Army Engineer for the Sacramento District.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

G. The term "betterment" shall mean a change in the design of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element, or the addition of an element of the Project that the Government would not otherwise accomplish.

H. The term "financial obligations for design" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in total design costs.

I. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.B. of this Agreement to total financial obligations for design, as projected by the Government.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously design the Project, applying those procedures usually applied to the engineering and design of Federal projects, pursuant to Federal laws, regulations, and policies.

1. To the maximum extent possible, the Government shall design the Project in accordance with the Project Management Plan for the Project and, if applicable, a Project Study Plan for any reevaluation during design, developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contracts modifications, including change orders, prior to the issuance to the contractor of a Notice to

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Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, 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 Sponsor 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 Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

B. The Non-Federal Sponsor shall provide, during the period of design a contribution equal to 25 percent of total design costs. If the Government projects that the value of the Non-Federal Sponsor's contributions under Articles III and VII will be less than 25 percent of total design costs, the Non-Federal Sponsor shall provide a contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its 25 percent share of total design costs.

C. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B. and E. of this Article and Articles III and VII of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B. and E. of this Article.

D. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total design costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Non-Federal Sponsor may request the Government to design betterments. Such requests shall be in writing and shall describe the betterments requested to be designed. If the Government in its sole discretion elects to design the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor 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 Sponsor shall be solely responsible for all costs due to the requested design of betterments and shall pay all such costs in accordance with Article IV.C. of this Agreement.

F. In accordance with Article IV.E. of this Agreement, the Government shall afford credit, toward the share of total project costs for the Project that is required of the non-Federal

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entity or entities executing the Project Cooperation Agreement or Agreements for the Project or separable element thereof, for the Non-Federal Sponsor's 25 percent share of total design costs required under paragraph B. of this Article.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Cooperation Agreement.

ARTICLE III - DESIGN COORDINATION TEAM

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

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

C. Until the end of the period of design, the Design Coordination Team shall generally oversee issues related to design, including scheduling of reports and work products; development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project; and other related matters.

D. The Design Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design, has the discretion to accept, reject, or modify the Design Coordination Team's recommendations.

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E. The costs of participation in the Design Coordination Team during the period of design shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of total design costs and costs due to additional work under Article II.E. of this Agreement. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total design costs, of total costs due to additional work under Article II.E. of this Agreement, of each party's share of total design costs, of the non-Federal proportionate share, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B. and II.E. of this Agreement, and of the funds the Government projects to be required from the Non-Federal Sponsor in accordance with Articles II.B. and II.E. of this Agreement for the upcoming fiscal year. On the effective date of this Agreement, total design costs are projected to be \$3,358,000, and the Non-Federal Sponsor's contribution required under Article II.B. of this Agreement is projected to be \$839,500. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required under Article II.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design through the first fiscal year of design, including the non-Federal proportionate share of financial obligations for design incurred prior to such payment. Not later than 30 calendar days after such notice the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Sacramento District," to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government.

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2. For the second and subsequent fiscal years of design, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for design incurred prior to the payment made under paragraph B.1 of this Article; and (b) the non-Federal proportionate share of financial obligations for design as they are incurred during the remainder of the period of design.

4. If at any time during the period of design the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for design for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanisms specified in paragraph B.1. of this Article.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, Sacramento District," to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with

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the full amount of the additional required funds through the funding mechanisms specified above.

D. Upon completion of design or termination of this Agreement, and upon resolution of all relevant proceedings, claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total design costs, each party's contribution provided thereto, and each parties required share thereof. The final accounting also shall determine total costs due to additional work under Article II.E. of this Agreement and the Non-Federal Sponsor's contribution provided pursuant to Article II.E. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement is less than its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement exceeds its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Government shall afford credit to the Non-Federal Sponsor during the construction or implementation of the Project (other than the 5 percent cash share for structural flood control), or the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Government shall afford credit for the Non-Federal Sponsor's 25 percent share of total design costs required under Article II.B. of this Agreement, in accordance with this paragraph. The Government shall afford such credit only after any payment to the Government or refund to the Non-Federal Sponsor required by paragraph D. of this Article has been made. To afford such credit, the Government shall apply the amount credited toward the share that non-Federal entities are required to provide toward total project costs for the Project. However, any amount credited for the value of the Non-Federal Sponsor's contributions toward total Design costs provided in accordance with Articles III and VII of this Agreement shall not be applied toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended. Nothing in this Agreement shall be

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construed to obligate the Government to repay the Non-Federal Sponsor, in whole or in part, for its 25 percent share of total design costs.

1. If Federal funds are appropriated for construction or implementation of the Project, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of the entire Project, then the Government shall afford credit for the entire 25 percent share.

2. If Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of such separable element, then the Government shall afford credit for such portion of the 25 percent share as is allocable to such separable element.

3. If no Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, or if the Government and a non-Federal entity do not enter into a Project Cooperation Agreement for construction or implementation of the Project or a separable element, then the Government shall not afford any credit for such 25 percent share.

ARTICLE V - 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. The parties shall each pay 50 percent 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 VI - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design for the Project and design for any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

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ARTICLE VII - 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 Sponsor 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 Sponsor 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 Sponsor shall each allow the other to inspect such books, documents, records, or other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 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 Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsor with the results of the final accounting 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 design costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

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ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to 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, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans.

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor 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 such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE X - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.E. or IV of 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 design of 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.

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B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for design for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to design of the Project and proceed to a final accounting in accordance with Article IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment from the Non-Federal Sponsor 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 XII - 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 either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

The Reclamation Board of the State of California
3310 El Camino Avenue
Room LL40
Sacramento, California 95821

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If to the Government:

U.S. Army Engineer District, Sacramento
District Engineer
1325 J Street
Sacramento, California 95814

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 XIII - 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 XIV - 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 Article XVI, Section 1 of the Constitution of California.

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

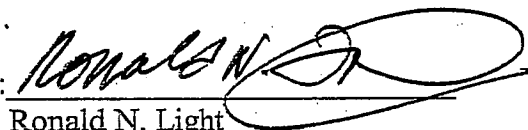
DWR Contract 4600004303
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

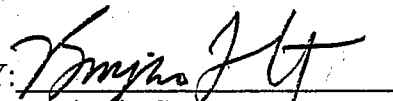
THE RECLAMATION BOARD
OF THE STATE OF CALIFORNIA

BY:



Ronald N. Light
Colonel, Corps of Engineers
District Engineer

BY:



Benjamin Carter
President
The Reclamation Board

DATE:

12/13/05

DATE:

11/18/05

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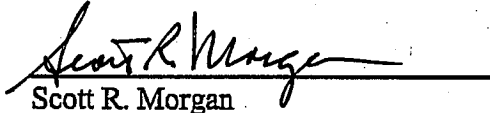
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CERTIFICATE OF AUTHORITY

I, Scott Morgan, do hereby certify that I am the principal legal officer of the Reclamation Board of the State of California, that the Reclamation Board of the State of 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 and the Reclamation Board of the State of California in connection with design of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project, and that the persons who have executed this Agreement on behalf of the Reclamation Board of the State of California have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

7th day of Oct. 2015.



Scott R. Morgan
Counsel for The Reclamation Board
of the State of California

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CERTIFICATION REGARDING LOBBYING

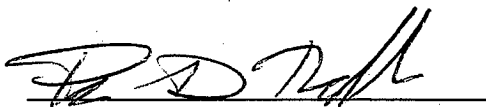
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 Section 1352, Title 31, U.S. Code. 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.



Peter D. Rabbon
General Manager
The Reclamation Board
of the State of California

DATE: 10/11/05

BUDGET DETAIL AND PAYMENT PROVISIONS

- I. **INVOICING AND PAYMENT**: Method of payment shall be in accordance with provisions stated in Article IV on pages 6 through 9 of this Agreement.
- II. **BUDGET CONTINGENCY CLAUSE**: It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

**EXHIBIT B—Special Terms and Conditions for
Department Of Water Resources
(Department of the Army Corps of Engineers)**

1. **AVAILABILITY OF FUNDS:** Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
2. **AUDIT CLAUSE:** For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract (Government Code Section 8546.7).
3. **CONFLICT OF INTEREST:**
 - a. **Current and Former State Employees:** Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) **Current State Employees:** (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) **Former State Employees:** (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
 - b. **Penalty for Violation:**
 - (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)
 - c. **Members of Boards and Commissions:**
 - (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

The Contractor must disclose to the DWR Program Manager any activities by contractor or subcontractor personnel involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DWR may immediately terminate this contract if the contractor fails to disclose the information required by this section. DWR may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

e. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

f. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC § 10365.5).

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Amendment 1
Page 1 of 6

AMENDMENT NUMBER 1
TO THE
DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA, THE RECLAMATION BOARD
FOR DESIGN
OF THE HAMILTON CITY FLOOD DAMAGE REDUCTION AND
ECOSYSTEM RESTORATION PROJECT, CALIFORNIA

THIS AMENDMENT is entered into this 11th day of August, 2006,
by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"),
represented by the U.S. Army Engineer, Sacramento District, and the STATE OF
CALIFORNIA, represented by the President of THE RECLAMATION BOARD
(hereinafter the "Non-Federal Sponsor").

WITNESSETH, THAT:

WHEREAS, the Consolidated Appropriations Act for Fiscal Year 2005, Public Law 108-447, included funds for the Government to initiate design (as defined in Article I.B. of this Agreement) of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project (hereinafter the "Project" as defined in Article I.A. of this Agreement) at Hamilton City, California:

WHEREAS, Section 105(c) of Public Law 99-662 (33 U.S.C Section 2215) [100 Stat 4089] provides that the cost of design of a water resources project shall be cost shared in the same percentage as the purposes of the project.

WHEREAS, the Government and the Non-Federal Sponsor entered into a Design Agreement on December 13, 2005 (hereinafter referred to as the "Agreement") for design of the Project;

WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsor's required cash contribution for the Project, less any funds previously contributed, for the immediate use by the Government for design of the Project;

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Page 2 of 6

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

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree that the Agreement is hereby amended in the following particulars but in no others:

1. **ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR**

Article II is amended by adding the following paragraphs at the end thereof:

“H. The Non-Federal Sponsor may offer in writing to accelerate a portion or all of its required cash contribution pursuant to Article II. B. of this Agreement during the period of design for immediate use by the Government. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Non-Federal Sponsor's required cash contribution pursuant to Article II. B. of this Agreement, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor. Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as customarily are required to accept such funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the costs of design of the Project. If the Government elects to accept such funds, it shall notify the Non-Federal Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions. In the event of a conflict between this Agreement and any such writing, this Agreement shall control. Such funds shall be used by the Government for design of the Project.

I. As Federal appropriations are made available to pay the Federal share of design of the Project, the Government shall afford credit for funds provided during the period of design in accordance with Article II H. of this Agreement. The Government shall credit this amount, provided during the period of design, toward the Non-Federal Sponsor's cash contribution required by Article II. B. of this Agreement. If after the final accounting at the end of the period of design, it is determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution

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pursuant to Article II.B. of this Agreement, the Government shall proceed in accordance with Article IV.D.2. of this Agreement to determine whether a refund is applicable. However, if in the event of a final accounting due to termination pursuant to Article XI.C. of this Agreement prior to the end of the period of design, it is determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution pursuant to Article II.B. of this Agreement, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds, except that any such excess funds which have not been obligated by the Government on the Project shall be refunded to the Non-Federal Sponsor, subject to the availability of funds."

2. ARTICLE IV – METHOD OF PAYMENT

a. The second sentence of Article IV.A. is amended by inserting the phrase: "of the credit to be afforded in accordance with Article II.I. of this Agreement," after "Articles II.B. and II.E. of this Agreement," and before "and of the funds the Government projects to be required from the Non-Federal Sponsor in accordance with Articles II.B. and II.E. of this Agreement for the upcoming fiscal year."

b. The first sentence of Article IV.B.2. is amended by inserting the phrase: "after consideration of any credit afforded pursuant to Article II.I. of this Agreement," after "of design," and before "the Government."

c. Article IV.B.3. is amended by adding at the end thereof: "; and (c) to the extent of funds accepted in accordance with Article II.H. of this Agreement, any other financial obligations for design in excess of the non-Federal proportionate share as they are incurred during the period of design."

d. Article IV.B.4. is amended by adding a comma after "the Government" in the first line and inserting the phrase: "after consideration of any credit afforded pursuant to Article II.I. of this Agreement," before "determines that additional funds will be needed from the Non-Federal Sponsor."

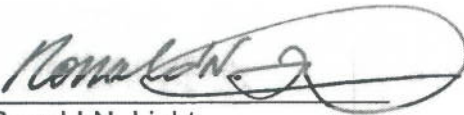
e. The first sentence of Article IV.D.2. is amended by adding the following phrase after the word "complete" at the end thereof: ", except that, if the final accounting results from termination pursuant to Article XI.C. of this Agreement, the amount of excess contribution that was provided in accordance with Article II.H. of this Agreement and for which credit was not afforded pursuant to Article II.I. of this Agreement shall not be reimbursed." The second sentence of Article IV.D.2. is amended by adding the parenthesis: "(not including the non-reimbursable amounts referenced in the preceding sentence)" after "refund the excess."

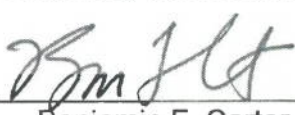
Contract 460004303
Amendment 1
Page 4 of 6

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

THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA
Represented by The Reclamation Board

BY: 
Ronald N. Light
Colonel, Corps of Engineers
District Engineer

BY: 
Benjamin F. Carter
President
The Reclamation Board

DATE: August 11, 2006

DATE: JUNE 30, 2006

Contract 460004303
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Page 5 of 6**CERTIFICATE OF AUTHORITY**

I, Scott Morgan, do hereby certify that I am the principal legal officer of the Reclamation Board of the State of California, that The Reclamation Board is a legally constituted public body with full authority and legal capability to perform, on behalf of the State of California, the terms of the Design Agreement between the Department of the Army and the State of California, as amended by Amendment Number 1 to the Agreement, in connection with the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project, California, and to pay damages in accordance with the terms of the amended Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California, acting by and through its Reclamation Board, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this
12 day of July 2006.

Scott R. Morgan
Scott Morgan, Counsel
The Reclamation Board

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Amendment 1
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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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

BY: Dan P. Fua
Dan Fua
Acting General Manager
The Reclamation Board

DATE: 6/29/06

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE RECLAMATION BOARD

RESOLUTION NO. 06-18

AMENDMENT TO THE DESIGN AGREEMENT
HAMILTON CITY FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION,
CALIFORNIA
AMENDMENT TO THE DESIGN AGREEMENT

WHEREAS, on December 13, 2005 The Reclamation Board (Board) and the U. S. Army Corps of Engineers (Corps) entered into a Design Agreement for the design of the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project; and

WHEREAS, the Corps is the federal sponsor and the Board is the nonfederal sponsor for the Design Agreement, and

WHEREAS, for the 2006 federal budget the Corps did not receive sufficient funds to cooperate in cost sharing and financing of the scheduled design costs; and

WHEREAS, design has been initiated by the Corps on December 13, 2005; and

WHEREAS, the non-federal share of the total estimated design cost is \$839,500; and

WHEREAS, to date the State has paid \$75,000 to the Corps as part of its obligation to cost share in design costs; and

WHEREAS, pursuant to the total non-federal commitment, the Board may accelerate up to \$764,500; and

WHEREAS, the Corps and the Board desire to amend the Design Agreement to allow for accelerating payment of the non-federal contribution to the Corps; and

WHEREAS, the Corps and the Board are negotiating language to amend the Design Agreement to allow for accelerating payment of non-federal contribution to the Corps; and

WHEREAS, execution of the amendment to the Design Agreement is necessary for advancing funds and to preclude design schedule slippage.

NOW, THEREFORE LET IT BE RESOLVED THAT:

1. The Board directs the General Manager to complete negotiations of the Design Agreement amendment with the Corps.

2. The Board approves amending the Design Agreement to advance funds to the Corps to maintain the design schedule.
3. The Board delegates its authority to the President or the Secretary of the Board to sign the amendment to the Design Agreement upon completion of the negotiations.

DATED: April 21, 2006

THE RECLAMATION BOARD OF THE
STATE OF CALIFORNIA

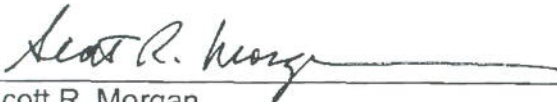


Benjamin F. Carter
President



for Teri E. Rie
Secretary

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY



Scott R. Morgan
Counsel