LOWER CACHE CREEK, YOLO COUNTY, WOODLAND AREA, CALIFORNIA GENERAL INVESTIGATION

FEASIBILITY STUDY

Resolution No. 2012-16

Amendment No. 1

Board Package Documents

CVFPB Meeting: March 22, 2013

Agenda Item 6K

Paul R. Larson, PE
Project Manager
USACE / CVFPB Studies Section

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Meeting of the Central Valley Flood Protection Board
March 22. 2013

Staff Report

Amendment No. 1
to the
Agreement between the Department of the Army and the State of California and the City of Woodland for the
Lower Cache Creek, Yolo County, Woodland Area, California
General Investigation Feasibility Study

1.0 ITEM

Consider approval of Resolution No. 2012-16 to:

1 Approve Amendment No. 1 to the Feasibility Cost Share Agreement (Agreement) between the Department of the Army, the State of California and the City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study; and

2 Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto.

3 Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required

2.0 SPONSORS

Federal: U.S. Army Corps of Engineers, Sacramento District
State: The Central Valley Flood Protection Board (Board)
Local: The City of Woodland

3.0 LOCATION

In accordance with the findings of the 1994 Reconnaissance Study performed by United States Army Corps of Engineers (USACE), the primary focus of the Study is flood risk reduction for the lower portion of the Cache Creek Basin, specifically the City of Woodland and the Town of Yolo.

Cache Creek originates at Clear Lake in Lake County and flows generally southeasterly through the Capay Valley, past Woodland, into the Cache Creek Settling Basin and then into the Yolo Bypass. The outfall of Cache Creek into the Yolo Bypass is in the

southeast corner of the Study area and is located approximately 15 miles northwest of Sacramento.

4.0 PROJECT DESCRIPTION:

The primary goals of the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study (LCCFS) is to identify flood risk management problems within the primary focus area, to analyze potential solutions to those problems, and to recommend a plan to be implemented that satisfies the USACE National Economic Development (NED) plan and represents the FloodSAFE vision. The LCCFS will focus on reducing flood risk to people, property and to the State's infrastructure in the vicinity of Lower Cache Creek and the City of Woodland. In accordance with State requirements, the State's intent will be to provide at least a 200-year level of protection for urban areas and to develop a sustainable flood management system for the future. The LCCFS will also consider ecosystem restoration and recreational opportunities within the Lower Cache Creek area that may be implemented as a part of any flood control solutions.

USACE uses the Feasibility Study process to formulate and present the results of investigations for congressional authorization of a flood control project. The LCCFS will identify and determine the extent of federal interest in flood risk reduction, flood management and ecosystem restoration alternatives within the Lower Cache Creek basin area.

5.0 PROJECT ANALYSIS

5.1 PROJECT BACKGROUND

This Amendment modifies the Feasibility Cost Share Agreement (FCSA) for the LCCFS. The LCCFS was first brought before the Central Valley Flood Protection Board (Board) (formerly the Reclamation Board) in December 1999. At that time the Board approved Resolution 99-22 for the Feasibility Cost Sharing Agreement (FCSA) and the related Local Feasibility Cost Sharing Agreement (LFCSA) with the City of Woodland.

In 2003, USACE and the Non-federal sponsors released the Draft Feasibility Report for public review and comment. The National Economic Development (NED) Plan proposed in that report met with significant opposition by the public and the LCCFS was abandoned.

In 2009, due to outreach efforts undertaken locally to identify other alternative plans that might receive public support, both USACE and the City of Woodland expressed their intent to seek funding to continue the LCCFS. Early in 2010, 10 years after the execution date and before any action could be taken; the cost sharing agreements expired pursuant to the terms of the original FCSA. In May 2011, new FCSA's were

executed between the Department of the Army (USACE), The State of California and the City of Woodland and the Study was resumed.

Due to the continuing budget issues at the federal level, the United States Congress has limited funding to USACE for Investigations (feasibility studies). Currently, USACE cannot expend Non-federal funds without matching available federal funds. Amendment No. 1 to the FCSA will allow USACE to be out of balance with Non-federal sponsor contributions.

Amendment No. 1 also provides the Non-federal sponsors the option of accelerating contributions to USACE up to the limits of the Non-federal cost share, as specified in the FCSA. The intent behind this language is to provide a mechanism to keep the LCCFS on schedule should there be a delay in future Federal funding. It is our expectation that USACE will be requesting adequate funding so this provision will only be used as a contingency to help maintain the LCCFS schedule if deemed necessary by the Non-federal sponsors. The decision to provide accelerated funding to USACE will not result in payment of any funds exceeding the current Non-federal sponsors' cost share, as specified in the FCSA. It will simply provide a mechanism by which the Board can provide funds before they would otherwise be due.

Additionally, Amendment No. 1 modifies the USACE funding request schedule from a federal fiscal year basis to a quarterly basis which would match previous FCSA language from similar studies. A fiscal year funding requirement restricts the State's and Local Sponsor's payment flexibility. The Fiscal Year (FY) funding requirement is also complicated by the fact that the federal FY differs from the State FY.

It is the intent of this study to be independent of the Cache Creek Settling Basin. While it is recognized that the basin is a significant part of the Lower Cache Creek flood control system, this feasibility study will only investigate how the basin may contribute to flooding in the study area. Separate from this request, Board staff will be requesting that the Board approve a letter to USACE asking them to initiate a Section 905(b) Reconnaissance Study focusing on necessary improvements to the Settling Basin that were identified during the last major improvement to the Basin in 1992.

5.2 PREVIOUS BOARD ACTIONS

Date:	Action:
September 10, 1999	Approved Letter of Intent to be a Non-federal sponsor of the Study.
December 17, 1999	Approved Resolution No. 99-22, approving the Feasibility Cost Sharing Agreement (FCSA) and the Local Feasibility Cost Sharing Agreement (LFCSA).

May 17, 2002	Approved Resolution No. 02-08, amending the FCSA and the LFCSA per the December 4, 2001 USACE Schedule and Cost Change request (SACCR).
January 19, 2010	Original Agreement (FCSA) expired
August 26, 2010	Approved Letter of Intent to be a Non-federal sponsor of the Study.
February 25, 2011	Approved Resolution 10-39, approving the new Feasibility Cost Sharing Agreement and a new Local Feasibility Cost Sharing Agreement.

5.3 PROJECT BENEFITS

The primary benefits of Amendment No 1 to the FCSA are:

- Allows the Feasibility Study to continue on schedule in the event federal funding is limited or delayed by utilizing accelerated funding provided by the Non-federal sponsors.
- Provides more flexibility in the State funding process by spreading payments out quarterly rather than in an annual lump sum

5.4 STAFF ANALYSIS

Amendment No. 1 will give the Non-federal sponsors (the Board and the City of Woodland) the option of accelerating their contribution share to USACE, for their immediate use, in an amount not to exceed the current estimate of the Board's required contribution. This acceleration of contributions to the USACE will be made entirely at the discretion of the Non-federal sponsors if deemed necessary to maintain the project schedule but must first be offered in writing, and accepted, by USACE.

It is our expectation that USACE will be requesting adequate federal funding so that this provision will only be used as a contingency to help maintain the LCCFS schedule and under no circumstances, will it result in contributions exceeding the total amount per the Non-federal sponsor's current cost share requirements.

Several current studies, including this one, are currently being reconsidered under the USACE Planning Modernization Effort (3x3x3 Rule). The 3x3x3 Rule requires studies to be re-set with a new scope, budget and schedule to complete the study within 3 years for a cost not to exceed $3 million and include the 3 levels of USACE vertical team involvement during the study process. While this re-set is intended to reduce the duration and overall cost of the study, significant cost savings by the non-federal sponsors may not be realized due to limited work-in-kind crediting opportunities.

It is important that this Feasibility Study continue to progress toward completion. In addition to the obvious public safety element, Proposition 1E bond funds for flood control projects must be appropriated by July 1, 2016.

It should be noted that the Board previously approved Resolution 2012-13 for the Lower San Joaquin River Feasibility Study. This was a similar FCSA amendment which also provided for the acceleration of contributions by the Non-federal sponsors.

This amendment also alters the required funding schedule imposed on the Non-federal sponsors from a federal fiscal year basis to a quarterly basis, similar to other current FCSAs. A quarterly system of funding payments offers more opportunities to manage the study progress and control costs.

As described in the Background discussion, above, this Feasibility Study will specifically exclude issues related to the Cache Creek Settling Basin. Board staff will be requesting the Board to approve a letter to USACE requesting them to conduct a Section 905(b) Reconnaissance Study focusing on necessary improvements to the Settling basin that were identified during the last major improvement to the Basin in 1992.

6.0 AUTHORIZATIONS

Federal: Flood Control Act of 1962, Section 209 (Public Law 87-874)
Energy and Water Development Act of 1993 (Public Law 102-377)

State: California Water Code Section 8615.

7.0 STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 2012-16 to:

1. Approve Amendment No. 1 to the Agreement between the Department of the Army and the State of California and the City of Woodland for the Lower Cache Creek, Yolo County, California General Investigation Feasibility Study; and

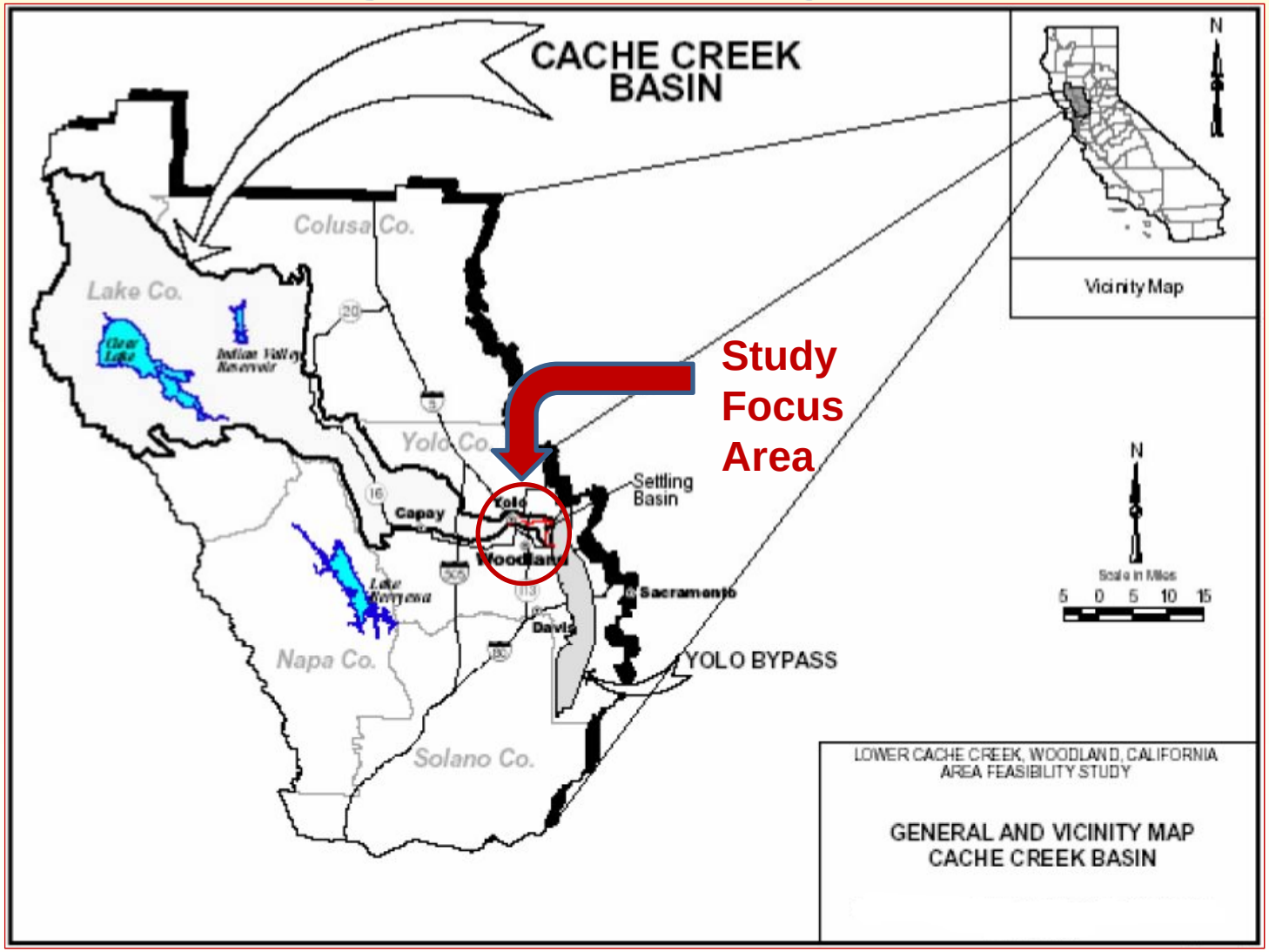
2. Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto; and

3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

8.0 LIST OF ATTACHMENTS

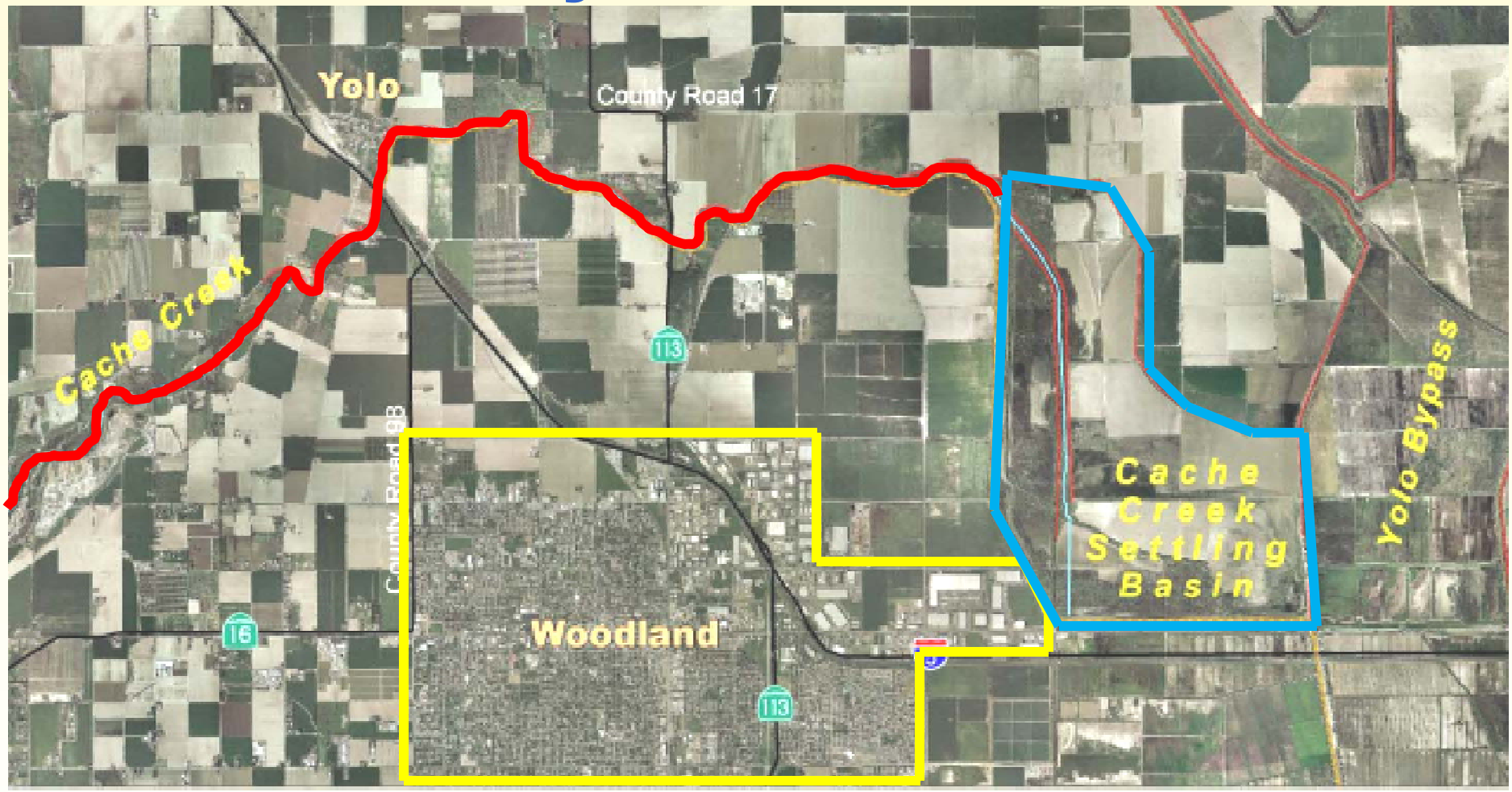
A.1 Location Map – Study Area
A.2. Location Map – Focus Area
B. Resolution 2012-16
C. Agreement - Amendment Number 1
D. PowerPoint Presentation
E. Feasibility Cost Sharing Agreement
F. Local Feasibility Cost Sharing Agreement

Project Study Area



FloodSAFE CALIFORNIA

Study Focus Area



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

RESOLUTION 2012-16

AMENDMENT NO. 1
TO THE
FEASIBILITY COST SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
STATE OF CALIFORNIA
AND
CITY OF WOODLAND
FOR THE
LOWER CACHE CREEK, YOLO COUNTY, WOODLAND AREA, CALIFORNIA
GENERAL INVESTIGATION FEASIBILITY STUDY

WHEREAS, Congress has authorized the United States Army Corps of Engineers (USACE) to conduct a study of flood control pursuant to Section 209 of the Federal Flood Control Act of 1962 (Public Law 87-874); and

WHEREAS, the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study (Study) was authorized by Congress in Section 209 of the Flood Control Act of 1962 (Public Law 87-874); and

WHEREAS, Central Valley Flood Protection Board (Board) participation in the Study is authorized by Water Code section 8615; and

WHEREAS, the State of California, the Reclamation Board, now known as the Board, and the USACE entered into a Feasibility Cost Sharing Agreement (FCSA) on January 20, 2000 to conduct the Study; and

WHEREAS, in 2003 the Study was abandoned due to increased study costs created by public comments to the Draft Feasibility Report and lack of support for the National Economic Development Plan; and

WHEREAS, the January 20, 2000 expired and new cost sharing agreements were required to begin a new feasibility study; and

WHEREAS, the City of Woodland signed a Letter of Intent dated August 6, 2010 to be a non-federal sponsor to the new study; and

WHEREAS, the Board signed a Letter of Intent dated August 26, 2010 to be a non-federal sponsor to the new study; and

WHEREAS, the Board, the Department of the Army (USACE) and the City of Woodland entered into a new feasibility study cost sharing agreement (FCSA) on May 23, 2011 for the purposes of conducting a feasibility study for the Lower Cache Creek, Yolo County, Woodland Area to investigate flood damage reduction, ecosystem restoration, and recreation opportunities; and

WHEREAS, per the April 2010 Project Management Plan provided by the USACE the Total Feasibility Cost Estimate is $5,600,500 which will be cost shared at a 50/50 cost split between the USACE and non-federal sponsors at $2,800,250 each, the non-federal cost share will be shared at a 50/50 cost split between the Board and the City of Woodland at $1,400,125 each; and

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541, amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. Section 2215(a)(1)(e)) to allow the local sponsors to provide their entire share of the study costs through the provision of in-kind services; and

WHERAS, the FCSA currently allows the USACE to make funding requests from the non-federal sponsor on a federal fiscal year basis; and

WHEREAS, this Amendment modifies the non-federal sponsor funding request schedule to allow the USACE to make funding requests on a quarterly basis; and

WHEREAS, this Amendment will allow the Board and the City of Woodland to offer to accelerate payment of non-federal funds to the USACE in an amount not to exceed the current estimate of the non-federal sponsors' required cost share, less any funds or in kind contribution previously contributed, for immediate use by the USACE to maintain the Study schedule.

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

1. Approves Amendment No. 1 to the Agreement between the Department of the Army, the State of California and the City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study; and

2. Delegates to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto; and

3. Delegates to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection

Board in the event acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

PASSED AND ADOPTED by vote of the Board on _____, 2013.

BY: _____ Date: _____
William H. Edgar
President

BY: _____ Date: _____
Jane Dolan
Board Secretary

Approved as to Legal Form and Sufficiency

_____
Jeremy Goldberg, Staff Counsel

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, D.C. 20314-1000

CECW-SPD

FEB 8 2013

MEMORANDUM THRU COMMANDER, SOUTH PACIFIC DIVISION (CESPD-CM-C) (ATTN: Ms. Karen Barresford) 1455 Market Street, San Francisco, California 94103-1398

FOR COMMANDER, SACRAMENTO DISTRICT (CESPK-DE), 1325 J Street, Sacramento, California 94105

SUBJECT: Lower Cache Creek, California - Amendment 1 to FCSA to Accelerate Funds

1. Reference: CECW-PC, memorandum dtd 15 June 2007, Subject: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study.

2. The subject Amendment 1 to FCSA is approved. A copy of the approved agreement is enclosed. Signature authority is delegated to the Sacramento District Commander.

3. You must ensure that the Amendment is signed by the sponsor as approved, without deviation, not later than 21 calendar days after the date of this memorandum. The Sacramento District should prepare a minimum of four final Amendment originals. Upon execution, the district will retain two copies of the executed Amendment. The remaining executed Amendments should be provided to the sponsor. A pdf copy of the executed Amendment should be forwarded to CECW-SPD-RIT (Bradd Schwichtenberg) not later than 14 days after signature of the Amendment by the district commander.

4. If any deviations to the approved Amendment are required, prior to signature by the sponsor, the district will transmit a memorandum notifying CECW-SPD-RIT of the reasons for the deviations and requesting approval of the deviations. Only after receipt of written approval from CECW-SPD-RIT, will the deviations be incorporated into the approved Amendment.

5. If the 21-day suspense will not be met the district will transmit a memorandum notifying CECW-SPD-RIT of the reasons for the slip or identifying changed conditions and the recommended course of action.

6. My point of contact is Mr. Bradd Schwichtenberg, who can be reached at 202-761-1367.

Encl

STEVEN L. STOCKTON, P.E.
Director of Civil Work

AMENDMENT NUMBER 1
TO THE
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
STATE OF CALIFORNIA
AND
CITY OF WOODLAND
FOR THE
LOWER CACHE CREEK, YOLO COUNTY, WOODLAND AREA, CALIFORNIA
GENERAL INVESTIGATION FEASIBILITY STUDY

This Amendment Number 1 is entered into on this _____ day of _____, 2013, by and between the Department of the Army (hereinafter "Government"), represented by the U.S. Army Engineer, Sacramento District (hereinafter the "District Engineer"), and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the City of Woodland (hereinafter the "City"), represented by its City Manager (the State and City when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the Government and the Reclamation Board of the State of California previously entered into an Agreement on January 20, 2000, for the purpose of performing a General Investigation Feasibility Study of Lower Cache Creek, California which terminated in accordance with its terms on or about January 19, 2010;

WHEREAS, the Government and the Non-Federal Sponsors entered into a new Feasibility Cost Sharing Agreement on May 23, 2011 (hereinafter the "Agreement") for cost sharing of the Study;

WHEREAS, the Non-Federal Sponsors may offer, in writing, to accelerate their provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsors' required contribution for the Study, less any funds previously contributed, for the immediate use by the Government for the Study;

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

WHEREAS, should the Non-Federal Sponsors elect not to accelerate funds, the Non-Federal Sponsors may still provide up to 100 percent of their required contribution for the Study as non-Federal in-kind contributions.

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

1. ARTICLE I – DEFINITIONS is amended as follows:

a. Paragraph B., second sentence, is amended by deleting "the Government's costs of external peer review, if required;" and replacing it with "the Government's costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel;".

b. Paragraph B, third sentence is amended by inserting "the costs of any contract for an Independent External Peer Review Panel for the *Study* pursuant to Section 2034 of the Water Resources Development Act of 2007 (33 U.S.C. 2343);" after "the Non-Federal Sponsors' costs of negotiating this Agreement;" and before "or any costs of negotiating a design agreement".

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

a. Paragraph E.4., is amended by deleting "providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law" and replacing it with "providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*".

b. Paragraph I., is amended by deleting "providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law" and replacing it with "providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*".

c. Article II is further amended by inserting the following additional paragraphs at the end thereof:

"K. The Non-Federal Sponsors may offer in writing to accelerate provision to the Government of all or a portion of their contribution of funds required by paragraph C.1. of this Article for immediate use by the Government for the *Study*. Any such offer shall be in writing and shall identify the amount of funds that the Non-Federal Sponsors are proposing for accelerated provision and use. Upon receipt of any such offer from the Non-Federal Sponsors, the Government shall evaluate the potential of using accelerated funds for work on the *Study*. If in its sole discretion the Government elects to accept such offer, the Government shall notify the Non-Federal Sponsors in writing of such

acceptance. Upon receipt of such accelerated funds, the Government shall use such funds for the *Study*. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the Non-Federal Sponsors' contribution of funds required by paragraph C.1. of this Article minus any funds previously contributed by the Non-Federal Sponsors as of the date the Government accepts the offered funds.

L. As Federal appropriations are made available to pay the Federal share of *total study costs*, the Government shall afford credit for the funds provided in accordance with paragraph K. of this Article toward the Non-Federal Sponsors' contribution of funds required by paragraph C.1. of this Article.

M. The Non-Federal Sponsors understand that neither execution of this Agreement nor acceptance of the accelerated funds constitutes, represents, or implies any commitment to budget or appropriate funds for this *Study* in the future or to match the amount of accelerated funds that the Non-Federal Sponsors elect to provide. Credit for these funds toward the Non-Federal Sponsors' contribution of funds required by paragraph C.1. of this Article shall be provided only to the extent that additional Federal funds are appropriated for this *Study*, and the Non-Federal Sponsors understand that they shall not be entitled to any repayment of these funds even if the *Study* is not completed. Nothing herein shall represent, or give rise to, obligations of the United States."

3. ARTICLE IV – METHOD OF PAYMENT is amended as follows:

a. Paragraph A.1 is amended by replacing the first sentence with the following:.

"As of the effective date of Amendment Number 1 to this Agreement, *total study costs* are projected to be $5,432,484; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be $2,716,242; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be $1,940,250; the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be $1,940,250; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be $775,992; and the *non-Federal proportionate share* is projected to be 49.24 percent."

b. Paragraph A.2. is amended by inserting "the credit afforded pursuant to Article II.L. of this Agreement;" after "the total contribution of funds required from the Non-Federal Sponsors for the upcoming contract and the upcoming *fiscal year*;" and before "and the *non-Federal proportionate share.*"

c. Paragraph B.1., first sentence, is amended by replacing the phrase "*fiscal year*" with the word "quarter".

d. Paragraph B.2.a. is amended by inserting "after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement," after "required from the Non-Federal Sponsors" and before "to meet".

e. Paragraph B.2.b. is amended by inserting "after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement," after "required from the Non-Federal Sponsors" and before "to meet" in the first sentence and replacing each occurrence in the paragraph of the phrase "*fiscal year*" with the word "quarter".

f. Paragraph B.3., first sentence, is amended by deleting "and" before "(b)" and by inserting the following at the end of the sentence:

"and (c) to the extent funds are offered and accepted in accordance with Article II.K of this Agreement, any other *financial obligations to be shared during the period of the study* in excess of the *non-Federal proportionate share* of *financial obligations to be shared during the period of study* as they are incurred during the *period of study*."

g. Paragraph B.3., second sentence, is amended by replacing the phrase "*fiscal year*" with the word "quarter" and by inserting "after consideration of the credit amount the Government affords pursuant to Article II.L. of this Agreement," after "the Government determines" and before "that additional funds will be needed" in the second sentence.

h. Paragraph C.2. is amended by inserting the following at the end thereof :

"However, if the final accounting is conducted prior to the end of the *period of study* due to termination of the Agreement pursuant to Article IX of this Agreement, and the Non-Federal Sponsors accelerated provision of all or a portion of their required contribution of funds in accordance with Article II.K. of this Agreement, the Government shall refund to the Non-Federal Sponsors only that portion of any such accelerated funds that were not obligated by the Government for work on the *Study*, subject to the availability of funds."

4. 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

BY: _____
William J. Leady, P.E.
Colonel, U.S. Army
District Engineer

DATE: _____

STATE OF CALIFORNIA

BY: _____
William H. Edgar
President
Central Valley Flood Protection Board

DATE: _____

CITY OF WOODLAND

BY: _____
Paul Navazio
City Manager

DATE: _____

CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of the State of California, Central Valley Flood Protection Board for this project, that the State of California, Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, as amended by Amendment No. 1, between the Department of the Army and the State of California, Central Valley Flood Protection Board and the City of Woodland in connection with the feasibility study for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the State of California, Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 20___.

_____

Jeremy Goldberg
Legal Counsel

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

BY:_____
William H. Edgar
President
Central Valley Flood Protection Board

DATE: _____

CERTIFICATE OF AUTHORITY

I, Andrew Morris, do hereby certify that I am the principal legal officer of the City of Woodland, that the City of Woodland is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, as amended by Amendment No. 1, between the Department of the Army and the State of California, Central Valley Flood Protection Board and the City of Woodland in connection with the feasibility study for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Woodland have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____day of _____20____.

_____

Andrew Morris
Legal Counsel

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

BY:_____
Paul Navazio
Woodland City Manager

DATE: _____

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Lower Cache Creek Feasibility Study

Feasibility Cost Sharing Agreement Amendment No. 1

Agenda Item 6K - Resolution 2012-16
March 22, 2013

Paul R. Larson, PE
Project Manager
USACE / CVFPB
Studies Section

Amendment #1

- Provides the option to the Non-federal sponsors to accelerate their contribution share in the event federal funding is delayed.
- Permits USACE to utilize Non-federal sponsor's contributions in advance of matching federal funds.
- Assists in maintaining the current Study schedule, as necessary, while not increasing the current total Non-federal sponsor's funding commitment.
- Modifies Non-federal funding schedule to a quarterly basis from the current contractual annual basis

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Requested Board Action

Consider approval of Resolution No. 2012-16 to:

1. Approve Amendment No.1 to the Agreement between the Department of the Army, the State of California and the City of Woodland for the Lower Cache Creek Feasibility Study; and

2. Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto; and

3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event the acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

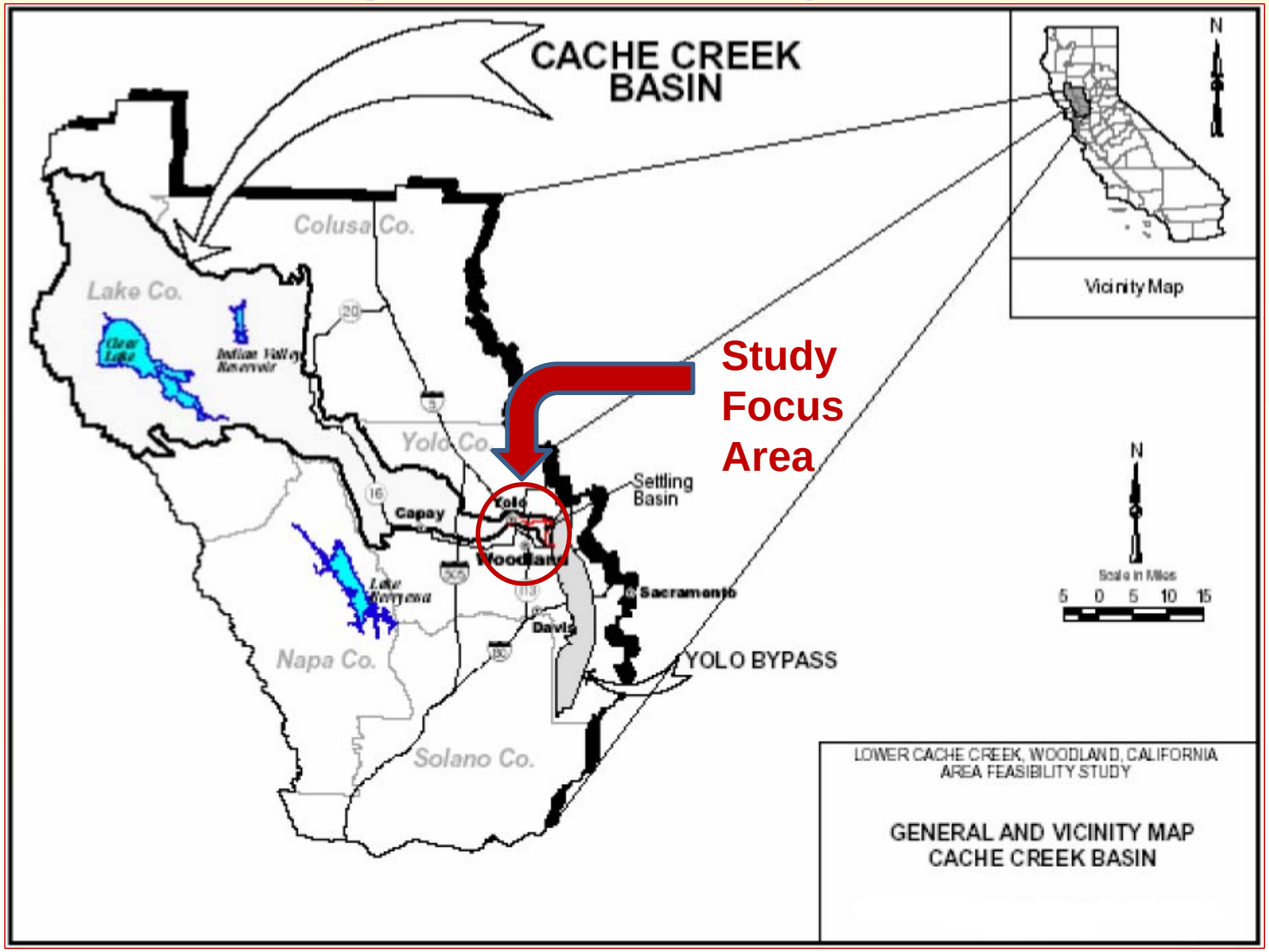
Study Sponsors

United States Army Corps of Engineers
Sacramento District (USACE)

Central Valley Flood Protection Board
(CVFPB)

City of Woodland

Project Study Area



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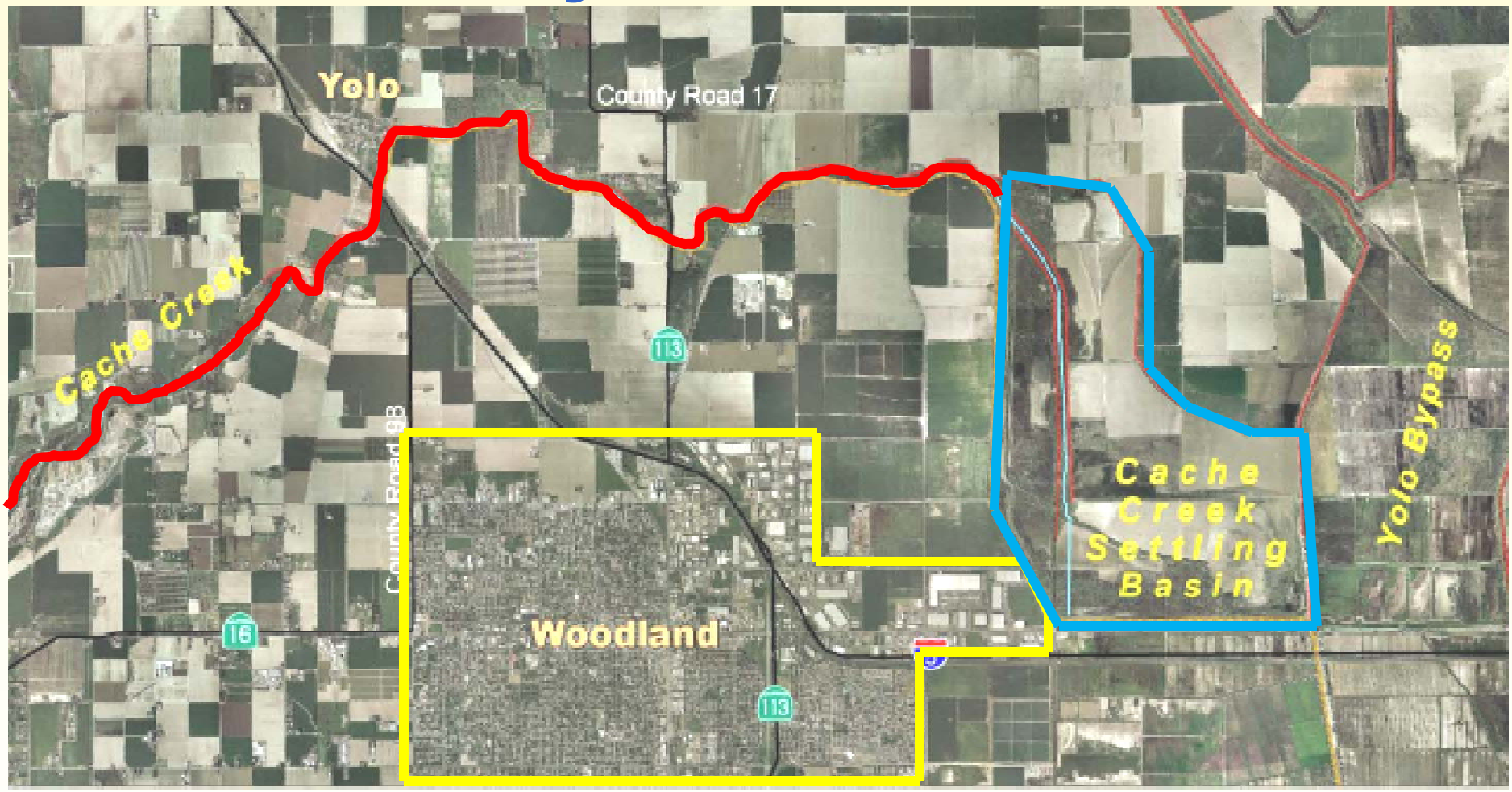
Study Focus Area



Study Goals

1. Primary Goals - Reduce Flood Risk

- Present project alternatives to reduce the risk of damage and the amount of damages due to flooding.

- Identify alternatives that provide appropriate flood protection to City of Woodland urban areas and surrounding communities in accordance with California Senate Bill 5.

2. Additional Goals

- Consider opportunities for recreation and ecosystem restoration as a part of flood risk reduction efforts

Study History

- A Reconnaissance Study, performed by USACE in 1994 at the request of Yolo County, found that federal interest existed to further study reduction of flood risk in the Lower Cache Creek area.

- The Lower Cache Creek Feasibility Study was initiated in 2000 to evaluate flood protection alternatives for the City of Woodland and adjacent communities.

- The study was suspended in 2003 due to funding issues and significant local opposition to the USACE-selected flood barrier alternative.

- The original Feasibility Cost Share Agreement expired in 2010.

Study History

- Due to continued local interest and outreach efforts to identify potential solutions that would receive more positive public support, USACE and the City of Woodland agreed to seek funding to reformulate alternatives for a new Feasibility Study.

- A new Feasibility Cost Share Agreement was executed in 2011.

- The Study was re-initiated to further investigate and reconsider alternatives to reduce the risk of flood damage in the Lower Cache Creek / Woodland area.

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FCSA Study Funding

Federal	$ 2,800,250	50%
State	$ 1,400,125	25%
Local	$ 1,400,125	25%
Total	**$5,600,500***	**100%**

*Prior to Scope & Cost Re-set per Planning Modernization Guidelines

- Total Federal Funding to Date = **$222,056**
- FY13 Federal Allocated Funding = **Unknown**
- FY14 Federal Allocated Funding = **Unknown**

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New Study Schedule

USACE Milestones	Est. Completion
• Scope and Cost Re-set per Planning Modernization Guidelines-	Early 2013
• Milestone #1 (Identify Alternatives)-	Spring 2013
• Milestone #2 (Tentatively Selected Plan)-	Fall 2013
• Milestone #3 (Draft Final Report / Agency Reviews)-	Early 2014
• Milestone #4 (Chief's Report)-	Early 2015

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Staff Recommendation

Adopt Resolution No. 2012-16 to:

1. Approve Amendment No. 1 to the Agreement between the Department of the Army, the State of California and the City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study; and

2. Delegate to the Central Valley Flood Protection Board President the authority to execute the Amendment in substantially the form attached hereto; and

3. Delegate to the Central Valley Flood Protection Board Executive Officer the authority to sign a letter of intent on behalf of the Central Valley Flood Protection Board in the event acceleration of the contribution of funds from the Non-federal sponsors to the U.S Army Corps of Engineers is required.

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Questions

CVFPB: Paul Larson, PE, Project Manager
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plarson@water.ca.gov

USACE: Charles Austin, Project Manager
(916)-557-7550
Charles.L.Austin@usace.army.mil

Woodland: Mark G. Devin, Woodland City Manager
(530) 661-5850
cm1@cityofwoodland.org

US Army Corps of Engineers®

City of Woodland

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

AGREEMENT NUMBER
4600009287
REGISTRATION NUMBER

1. 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

2. The term of this Agreement is: February 25, 2011 through Notice of completion
This Agreement shall not become effective until approved by the Department of General Services.

3. The maximum amount of this Agreement is: $2,716,242.00
Two million seven hundred-sixteen two hundred and forty two dollars and no cents.

4. 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 Feasibility Cost Sharing Agreement and the State of California Central Valley Flood Protection Board for Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study.

Signatures appear on page 19 of the Agreement.

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

CONTRACTOR	
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	
ADDRESS	

STATE OF CALIFORNIA	
AGENCY NAME	
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	

California Department of General Services Use Only

APPROVED
APR 29 2011
DEPT OF GENERAL SERVICES

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
STATE OF CALIFORNIA
AND
CITY OF WOODLAND
FOR THE
LOWER CACHE CREEK, YOLO COUNTY, WOODLAND AREA, CALIFORNIA
GENERAL INVESTIGATION FEASIBILITY STUDY

This agreement is entered into on this 23rd day of May, 2011, by and between the Department of the Army (hereinafter "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the City of Woodland (hereinafter the "City"), represented by its City Manager (the State and City when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the Corps of Engineers is authorized to conduct a feasibility study of Sacramento River Basin pursuant to Section 209 of the Flood Control Act of 1962 (Public Law 87-874);

WHEREAS, prior to proceeding with such feasibility study, the U.S. Army Corps of Engineers conducted a reconnaissance study described in the Reconnaissance Report, Northern California Streams Westside Tributaries to Yolo Bypass, California, June 1994 which recommended that further planning in the nature of a feasibility studies for the Westside Tributaries to the Yolo Bypass should proceed;

WHEREAS, the Government and the Reclamation Board of the State of California previously entered into an Agreement on January 20, 2000, for the purpose of performing a General Investigation Feasibility Study of Lower Cache Creek, California which terminated in accordance with its terms on or about January 19, 2010;

WHEREAS, the Corps of Engineers has determined that additional time is needed to complete the feasibility study;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into an agreement (hereinafter the "Agreement") to conduct such feasibility study (hereinafter the *"Study"* as defined in Article I.A. of this Agreement);

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the *Study*;

WHEREAS, the Non-Federal Sponsors desire to provide in-kind contributions (hereinafter the *"non-Federal in-kind contributions"* as defined in Article I.K. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the *Study;*

WHEREAS, the Non-Federal Sponsors may provide up to 100 percent of their required contribution for the *Study* as *non-Federal in-kind contributions*;

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 *Study* 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 *Study*.

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

ARTICLE I – DEFINITIONS

A. The term "*Study*" shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management, ecosystem restoration, and recreation at Lower Cache Creek, Yolo County, Woodland Area, CA as generally described in the Reconnaissance Report, Northern California Streams Westside Tributaries to Yolo Bypass, California, June 1994, approved by John N. Reese, Colonel, Corps of Engineers, Sacramento District Engineer, June 1994. The term includes the *Non-Federal in-kind contributions* described in paragraph K. of this Article.

B. The term "*total study 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 performance of the *Study*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and

environmental analyses; the Government's costs of preparation of the decision document for the *Study*; the costs of the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the Government's costs of independent technical review and other review processes required by the Government; the Government's costs of external peer review, if required; the Government's supervision and administration costs; the Non-Federal Sponsors' and the Government's costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsors' and the Government's costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; any costs incurred as part of feasibility studies under any other agreement; the Non-Federal Sponsors' costs of negotiating this Agreement; or any costs of negotiating a design agreement for a project or separable element thereof.

C. The term "*study costs to be shared during the period of study*" shall mean the difference between *total study costs* and *excess study costs*.

D. The term "*excess study costs*" shall mean the difference between the most recent estimate of *total study costs* and the amount of *total study costs* specified in Article IV.A.1. of this Agreement, excluding any increase in *total study costs* that resulted from a change in Federal law or a change in the scope of the *Study* requested by the Non-Federal Sponsors or any increase in *total study costs* that otherwise was agreed upon in writing by the parties.

E. The term "*period of study*" shall mean the time from the effective date of this Agreement to the date that:

1. the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with policies and programs of the Administration, if the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan; or

2. the decision document for the study is duly approved by the Government, if the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan; or

3. the date that this Agreement is terminated in accordance with Article IX of this Agreement.

F. The term "*financial obligations to be shared during the period of study*" shall mean the financial obligations of the Government and the costs for the *non-Federal in-kind*

contributions, as determined by the Government that result or would result in costs that are or would be included in *study costs to be shared during the period of study*.

G. The term "*Non-Federal proportionate share*" shall mean the ratio of the sum of the costs included in *study costs to be shared during the period of study* for the *non-Federal in-kind contributions*, as determined by the Government, and the Non-Federal Sponsors' total contribution of funds required by Article II.C.1.b. of this Agreement to *financial obligations to be shared during the period of study*, as projected by the Government.

H. 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.

I. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

J. The term "*PMP*" shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsors, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

K. The term "*non-Federal in-kind contributions*" shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsors after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

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 conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsors expeditiously shall perform or provide the *non-Federal in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

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

2. To the extent possible, the Government and the Non-Federal Sponsors shall conduct the *Study* in accordance with the *PMP*.

3. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the final approval of all *Study* products shall be exclusively within the control of the Government.

4. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all Government 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 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 work on the *Study* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for the *non-Federal in-kind contributions*, shall be exclusively within the control of the Government.

5. At the time the U.S. Army Engineer, Sacramento District (hereinafter 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 *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsors.

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

work on the *non-Federal in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsors.

7. At the time the Non-Federal Sponsors furnish a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsors for the *non-Federal in-kind contributions*, the Non-Federal Sponsors shall furnish a copy thereof to the Government.

8. Notwithstanding paragraph A.4. and paragraph A.6., if the award of any contract for work on the *Study*, or continuation of work on the *Study* using the Government's or the Non-Federal Sponsors' own forces, would result in *excess study costs*, the Government and the Non-Federal Sponsors agree to defer award of that contract, award of all remaining contracts for work on the *Study*, and continuation of work on the *Study* using the Government's or the Non-Federal Sponsors' own forces until such time as the Government and the Non-Federal Sponsors agree in writing to proceed with further contract awards for the *Study* or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsors' own forces, but in no event shall the award of contracts or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsors' own forces be deferred for more than six months. If the Government and the Non-Federal Sponsors agree to not proceed or fail to reach agreement on proceeding with further contract awards for the *Study*, or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsors' own forces, the parties shall terminate this Agreement and proceed in accordance with Article IX.E. of this Agreement.

9. As of the effective date of this Agreement, $86,096 of Federal funds is currently projected to be available for the *Study*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Study*. Further, the Government's financial participation in the *Study* is limited to the Federal funds that the Government makes available to the *Study*.

B. The Government shall allocate *total study costs* between *study costs to be shared during the period of study* and *excess study costs*.

C. The Non-Federal Sponsors shall contribute 50 percent of *study costs to be shared during the period of study* in accordance with the provisions of this paragraph.

1. 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 Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement will be less than the Non-Federal Sponsors' required share of 50 percent of *study costs to be shared during the period of study*, the Government shall determine the amount of funds

that would be necessary to meet the Non-Federal Sponsors' required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

b. The Non-Federal Sponsors shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsors shall provide, the Government shall reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph G. of this Article, shall refund or reimburse to the Non-Federal Sponsors any contributions in excess of 50 percent of *study costs to be shared during the period of study* if the Government determines at any time that the collective value of the following contributions has exceeded 50 percent of *study costs to be shared during the period of study*: (a) the value of the Non-Federal Sponsors' contributions under paragraph C.1.b. of this Article; (b) the amount of credit to be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article; and (c) the value of the Non-Federal Sponsors' contributions under Article III and Article VI of this Agreement.

D. The Non-Federal Sponsors shall contribute 50 percent of *excess study costs* in accordance with the provisions of this paragraph.

1. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsors' required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

2. The Non-Federal Sponsors shall provide funds in the amount determined by this paragraph in accordance with Article IV.C.3. of this Agreement. To determine the contribution of funds the Non-Federal Sponsors shall provide, the Government shall reduce the amount determined in accordance with paragraph D.1. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsors for *non-Federal in-kind contributions*, subject to the conditions and limitations of this paragraph. 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 amount of costs to be included in *total study costs* for *non-Federal in-kind contributions*.

1. Acceptance by the Government of *non-Federal in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *non-Federal in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *non-Federal in-kind contributions* are necessary for the *Study*.

2. The Non-Federal Sponsors' costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

3. The Non-Federal Sponsors' costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* 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 *non-Federal in-kind contributions* are provided and the time the costs are included in *total study costs*.

4. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* paid by the Non-Federal Sponsors using *Federal program funds* 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.

5. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* in excess of the Government's estimate of the costs of the *non-Federal in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government.

F. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article for the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article. The credit for *non-Federal in-kind contributions* first shall be afforded toward the amount of funds determined in accordance with paragraph C.1.a. of this Article. If the amount of credit afforded exceeds the amount of funds determined in accordance with paragraph C.1.a. of this Article, the remaining portion of credit to be afforded shall be afforded toward the amount of funds determined in accordance with paragraph D.1. of this Article. However, the maximum amount of credit that can be afforded for the *non-Federal in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article; the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article; or 50 percent of *total study costs*.

G. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement of any costs of *non-Federal in-kind contributions* determined in accordance with paragraph E. of this Article and included in *total study costs* that exceed the amount of credit afforded for the *non-Federal in-kind contributions* determined in accordance with paragraph F. of this Article and the Non-Federal Sponsors shall be responsible for 100 percent of all costs of *non-Federal in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

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

I. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of its obligations for the *Study* 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.

J. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government supports a project authorization, if authorization is required, and budgets for implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

ARTICLE III - STUDY 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 Study Coordination Team. Thereafter, the Study Coordination Team shall meet regularly until the end of the *period of study*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsors shall co-chair the Study Coordination Team.

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

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review

processes required by the Government; external peer review, if required; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of and scheduling for the *non-Federal in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* except for the *non-Federal in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations. On matters related to the *non-Federal in-kind contributions*, that the Study Coordination Team generally oversees, the Study Coordination Team may make recommendations to the Non-Federal Sponsors including suggestions to avoid potential sources of dispute. The Non-Federal Sponsors in good faith shall consider the recommendations of the Study Coordination Team. The Non-Federal Sponsors, having the legal authority and responsibility for the *non-Federal in-kind contributions*, have the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

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

ARTICLE IV - 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, the contributions provided by the parties, the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be $5,600,500; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be $2,716,242; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be $1,940,250; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be $1,940,250; the Non-Federal Sponsors' contribution of funds required by Article II.C.1.b. of this Agreement is projected to be $691,984; and the *non-Federal proportionate share* is projected to be 48 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

2. By March 31, 2011 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, 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 study costs*; *study costs to be shared during the period of study*; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsors' contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsors' contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement; the total contribution of funds required from the Non-Federal Sponsors for the upcoming contract and upcoming *fiscal year*; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsors shall provide the contribution of funds required by Article II.C.1.b. 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 work on the *Study* or commencement of work on the *Study* using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsors to meet: (a) the *non-Federal proportionate share* of *financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share* of *financial obligations to be shared during the period of study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share* of *financial obligations to be shared during the period of study* using the Government's own forces through the first *fiscal year*. 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, EROC 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.

2. Thereafter, until the work on the *Study* 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. 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 each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the projected *non-Federal proportionate share* of *financial obligations to be shared during the period of study* 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. of this Article.

b. The Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make *financial obligations to be shared during the period of study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the projected *non-Federal proportionate share* of *financial obligations to be shared during the period of study* using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsors shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement, to cover: (a) the *non-Federal proportionate share* of *financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share* of *financial obligations to be shared during the period of study* as *financial obligations to be shared during the period of study* 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 for the

current contract or to cover the Non-Federal Sponsors' share of such financial obligations for work performed using the Government's own forces in the current *fiscal year*, 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. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, 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 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 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 study costs*, *study costs to be shared during the period of study*, and *excess study costs*. In addition, 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 share of *study costs to be shared during the period of study* exceeds 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, EROC 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 *study costs to be shared during the period of study* exceed the Non-Federal Sponsors' total required share thereof, the Government, subject to the availability of funds and as limited by Article II.G. of this Agreement, shall refund or reimburse 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 is 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.

3. Should the final accounting show that the Non-Federal Sponsors' total required share of *excess study costs* exceeds the Non-Federal Sponsors' total contributions provided thereto the Non-Federal Sponsors, within the applicable time

frame described below, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Sacramento District EROC L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

a. If the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan and:

i. the project or project modification is authorized for construction – then the payment shall be made no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. the project or project modification is not authorized for construction within 5 years after the date of the final Report of the Chief of Engineers concerning the project or project modification – then the payment shall be made no later than 5 years after the date of the final Report of the Chief of Engineers; or

iii. the *Study* is terminated and the project or project modification is not authorized for construction - then the payment shall be made no later than 2 years after such termination date.

b. If the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan, then the payment shall be made:

i. no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. no later than 5 years after the date the decision document is duly approved by the Government; or

iii. no later than 2 years after the date of the termination of the *Study*, whichever is earliest.

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. 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 VI - 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 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 *Study* shall be included in *total study 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 is 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 study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - 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 and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE VIII - 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 IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, 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 either the Government or the Non-Federal Sponsors elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsors fails to fulfill its 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 performance of the *Study* 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 *Study*.

C. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* 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 *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, 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 study costs* 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.

D. In the event that one or more of the Non-Federal Sponsors elects to terminate its responsibilities under this Agreement, and the remaining Non-Federal Sponsor(s) elects to continue to participate in the *Study*, the Government shall negotiate in good faith with the remaining Non-Federal Sponsor(s) to effect a timely and productive conclusion to that portion of the *Study* pertaining to the area of statutory authority applicable for the remaining Non-Federal Sponsor(s). The Government shall prepare a revised *PMP* and revised estimate of *total study costs* to complete that portion of the *Study* of interest to the remaining Non-Federal Sponsor(s). If the remaining Non-Federal Sponsor(s) elects to complete the *Study*, this Agreement shall be amended to reflect the negotiated revisions to the scope of the *Study* defined in Article I.A. of this Agreement and the estimate of *total study costs* in Article IV.A.1. of this Agreement. Amendments to this Agreement made pursuant to this paragraph shall reflect credits for the contribution of funds and *non-Federal in-kind contributions* provided previously by all of the *Study* sponsors and shall reflect task reductions made as a result of withdrawal of any *Study* sponsor.

E. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.C.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

F. 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 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 X - 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:

Central Valley Flood Protection Board
Executive Officer
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

City of Woodland
City Manager
300 First Street
Woodland, CA 95695

If to the Government:

U.S. Army Corps of Engineers
District Engineer
Sacramento District
1325 J Street
Sacramento, CA 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 XI - 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 XII - 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 XIII – 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 the State of California.

B. The Non-Federal Sponsors intend to fulfill their obligations under this Agreement. The Non-Federal Sponsors shall include in their budget request 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: _____
Andrew B. Kiger, P.E.
Lieutenant Colonel, U.S. Army
District Engineer

DATE: 23 MAY 2011

STATE OF CALIFORNIA

BY: _____
Benjamin Carter
President
Central Valley Flood Protection Board

DATE: 2/25/11

CITY OF WOODLAND

BY: _____
Mark G. Deven
City Manager

DATE: 2-14-11

CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of the State of California, Central Valley Flood Protection Board for this project, that the State of California, Central Valley Flood Protection 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 and the State of California, Central Valley Flood Protection Board in connection with the feasibility study for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the State of California, Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 1 day of March, 2011.

Jeremy Goldberg
Legal Counsel

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

BY: Benjamin Carter

Benjamin Carter
President
Central Valley Flood Protection Board

DATE: 2/25/11

CERTIFICATE OF AUTHORITY

I, Andrew Morris, do hereby certify that I am the principal legal officer of the City of Woodland, that the City of Woodland 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 City of Woodland in connection with the feasibility study for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Woodland have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 14th day of February 2011.

Andrew Morris

Andrew Morris
Legal Counsel

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

BY: Mark G. Deven
Mark G. Deven
Woodland City Manager

DATE: 2-14-11

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

I, Kimberly McKinney, do hereby certify that I am the Financial Officer of the City of Woodland (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Agreement between the Department of the Army and State of California and City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study.

IN WITNESS WHEREOF, I have made and executed this certification this 18th day of October, 2010.

BY: _____
Kimberly McKinney
Financial Officer

DATE: 10/18/10

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

I, Jay Punia, do hereby certify that I am the Executive Officer of the State of California Central Valley Flood Protection Board (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Agreement between the Department of the Army and State of California and City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study.

IN WITNESS WHEREOF, I have made and executed this certification this 20th day of September, 2010.

BY: Jay S. Punia
Jay Punia
Executive Officer, State of California Central
Valley Flood Protection Board

DATE: 9/20/2010

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

AGREEMENT NUMBER
4600009286/320593

REGISTRATION NUMBER
ep1144195

1. 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
City of Woodland

2. The term of this Agreement is: February 25, 2011 through Upon completion of the project

This Agreement shall not become effective until approved by the Department of General Services.

3. The maximum amount of this Agreement is: $1,358,121.00
One million three hundred and fifty-eight thousand one hundred and twenty one dollars and no cents.

4. 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 Local Feasibility Cost Sharing Agreement (LFCSA) Between the State of California Department of Water Resources and the City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study Project.

Signatures appear on page 7 of 7 of the 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		
ADDRESS		APPROVED APR 29 2011 DEPT OF GENERAL SERVICES
STATE OF CALIFORNIA		
AGENCY NAME		
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

LOCAL FEASIBILITY COST SHARING AGREEMENT BETWEEN THE CENTRAL VALLEY FLOOD PROTECTION BOARD AND THE CITY OF WOODLAND FOR THE LOWER CACHE CREEK, YOLO COUNTY, WOODLAND AREA, CALIFORNIA GENERAL INVESTIGATION FEASIBILITY STUDY

This AGREEMENT is made and entered into this _____ day of _____, 2011, by and between The State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board) and the City of Woodland.

RECITALS:

WHEREAS, the U.S. Army Corps of Engineers (USACE) is authorized to conduct a General Investigation Feasibility Study (Study) of flood protection alternatives for the City of Woodland and adjacent unincorporated areas in Yolo County, pursuant to Section 209 of the Flood Control Act of 1962, Public Law 87-874, and the California Water Code Sections 8615; and

WHEREAS, Water Code section 8615 authorizes the Board to participate in the Study; and

WHEREAS, the Board and the City of Woodland are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and

WHEREAS, the Board concurrent with this AGREEMENT is entering into a Feasibility Cost Sharing Agreement titled "Agreement Between the Department of the Army and State of California and City of Woodland for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study" (FCSA), to be completed in accordance with the Project Management Plan (PMP) dated April 2010; and

WHEREAS, in June 1994, the USACE finished the Westside Tributaries of the Yolo Bypass Reconnaissance Report which identified federal interest in pursuing feasibility-phase studies of flood control improvements along Cache Creek; and

WHEREAS, the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study began in 2000 and was abandoned in 2003; and

WHEREAS, the January 20, 2000 Feasibility Cost Sharing Agreement Between the Department of the Army and the Reclamation Board for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study and the January 18, 2000 Local Feasibility Cost Sharing Agreement for the Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study have expired; and

WHEREAS, in 2009 the USACE and the City of Woodland have expressed their intention to seek funding to reformulate alternatives for a new Lower Cache Creek, Yolo County, Woodland Area, California General Investigation Feasibility Study (LCCFS); and

WHEREAS, on August 6, 2010, the City of Woodland approved a Letter of Intent to become a Non-Federal Sponsor for the LCCFS; and

WHEREAS, on August 26, 2010, the Board approved a Letter of Intent to become a non-federal sponsor for the LCCFS; and

WHEREAS, the Board desires to become a party to the FCSA as a Non-Federal Sponsor, and the City of Woodland and USACE desire the Board to become a party to the FCSA; and

WHEREAS, the Board and the City of Woodland have agreed to be responsible for the functions of the Non-Federal Sponsors under the FCSA and have agreed to the terms of the Study and a maximum contribution described in the FCSA; and

WHEREAS, the Board and the City of Woodland desire to specify their respective contributions and other obligations during the term of the Study.

NOW, THEREFORE, the Board and the City of Woodland agree as follows:

1. Feasibility Cost Sharing Agreement. A copy of the FCSA is attached hereto as Exhibit A and incorporated by this reference. This AGREEMENT shall be subject to all applicable provisions of the FCSA and subsequent FCSA amendments.

2. Study Sponsor. The Board and the City of Woodland have agreed to perform the functions of the Non-Federal Sponsor as stated in the FCSA.

3. Study Activities. Participation by the Board and the City of Woodland in the Study is limited to the activities described in the PMP.

4. Local Cost-Sharing.

   A. Contributions.

      1) The Board and the City of Woodland agree that their contributions to the Study costs shall be as follows:

Table 1

Non-Federal Sponsor	Percent (Total Study)
Board	25
City of Woodland	25
Total	50

All or a portion of each of the respective contributions of the City of Woodland and the Board toward the Study costs may be either cash or In-Kind Services as defined in the FCSA. The City of Woodland's In-Kind Services shall be subject to the requirements of the FCSA and may only be used as contributions after approval has been obtained from the USACE.

2) Cash contributed and/or authorized work performed by the City of Woodland or their consultants prior to this AGREEMENT may only be used as contributions after approval has been obtained from the USACE.

3) At such time as the USACE notifies the Board and the City of Woodland that payments are due under the FCSA, the Board and the City of Woodland shall each pay or contribute their respective shares directly to the USACE consistent with the FCSA. Checks shall be made payable to the Finance and Accounting Officer, USAED, Sacramento District, 1325 J Street, California 95814. The City of Woodland shall provide notification of payment to the Board, and the Board shall provide notification of payment to the City of Woodland.

4) Each party to this AGREEMENT shall be obligated only for the percentage shown in Table 1 above unless this AGREEMENT is amended in writing and signed by both parties.

5) In the event that the Board does not secure any or all of the Board's share of Study costs during the term of this Agreement, City of Woodland may, in its sole discretion, temporarily advance funds and/or In-Kind Services to cover the shortfall including the cost of any In-Kind Services. Alternatively, the City of Woodland may decide to terminate the FCSA and this AGREEMENT pursuant to paragraph 8. The Board shall diligently pursue securing its share of such Study costs and, when secured, fund the non-federal share until such advance by the City of Woodland is covered, without interest thereon. In lieu of funding the non-federal share as described above, the Board, in its sole discretion, may opt to repay the City of Woodland for any such advance in whole or in part; in the event the Board opts to make a partial repayment, the Board shall cover the balance due by funding the non-federal share until the City of Woodland's advance is recovered, without interest thereon.

B. Final Accounting. The Board shall prepare and submit to the City of Woodland a final accounting of the expenses and revenues of the Study at or prior to termination of the FCSA. At such time, any cash surplus remaining from the cash contributions provided for in Paragraph 4.A.4 shall be credited and returned to the Board and the City of Woodland in proportion to their respective cash contributions added to their In-Kind Services contributions. It is understood in making such final accounting that any cash payments to the USACE shall be deemed to have been made first from the principal of the cash contributions, and then from the earned interest only if the principal has

been exhausted. Any earned interest remaining at the time of the final accounting shall be credited and returned to the Board and the City of Woodland pro-rated according to the time the respective cash contributions were on deposit with the State's cash investment pool.

5. Disputes: The City of Woodland and the Board shall continue with their responsibilities under this AGREEMENT during any dispute, subject to the parties' respective rights to terminate or suspend the FCSA and this Agreement pursuant to paragraph 8 herein.

6. Records and Reports.

   A. The Board shall coordinate with the USACE in the maintenance of adequate records of the expenses and revenues of the Study, and such records shall be available for inspection and audit by the designated representatives of the City of Woodland within 14 days of any such records being compiled.

   B. The City of Woodland shall maintain adequate records of expenses and such records shall be available for inspection and audit by the Board throughout the life of this AGREEMENT and for a period of ten years after the termination of this AGREEMENT.

   C. The Board shall furnish the City of Woodland with copies of any financial or progress reports received from the USACE within 14 days of receipt of such by the Board.

   D. Upon completion of the Study, the Board shall furnish the City of Woodland two copies of the USACE Study within 14 days of receipt of such by the Board.

7. Designated Representative. The designated representative by the Board for administration of this AGREEMENT shall be the Executive Officer of the Central Valley Flood Protection Board. The designated representative for the City of Woodland for this AGREEMENT shall be the City Manager. The City of Woodland may change its designated representative at any time, and shall notify the Board in writing of any such change.

8. Term of Agreement. The term of this AGREEMENT shall be co-extensive with the term of the FCSA. For good cause, the City of Woodland or the Board may exercise their independent rights, under the FCSA, to terminate or suspend the FCSA. "Good Cause" includes but is not limited to either of the parties' inability to renegotiate the provisions of this AGREEMENT that are affected by any changes to the Final FCSA, the Board's inability to secure the balance of its share of Study cost, and the City of Woodland's inability to appropriate necessary funding for its share of the Study cost (subject, however, to the provisions of Section 4.A.5 hereof). If the FCSA is terminated, this AGREEMENT shall be deemed terminated as of the effective date of the FCSA termination. Upon

termination of this AGREEMENT, all data and information generated as part of the Study shall be made available to both parties.

9. Severability Clause. If any provision of this AGREEMENT is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this AGREEMENT be construed to remain fully valid, enforceable and binding on the parties.

10. Notice. Any notice or other communication required under this AGREEMENT shall be in writing and shall be delivered in person to the other party or parties or deposited in the United States mail, postage prepaid, addressed to the other party or parties at the following addresses:

Jay Punia, Executive Officer (916) 574-0609
The Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

Mark G. Deven, Woodland City Manager (530) 661-5800
City of Woodland
300 First Street
Woodland, CA 95695

11. Successors and Assigns. This AGREEMENT shall be binding upon the successors and assigns of the respective parties.

12. Obligation of Future Appropriations. Nothing herein shall constitute nor be deemed to constitute an obligation of future appropriations by the Legislature of the State of California.

13. Independent Contractor: The City of Woodland, and its agents and employees, in the performance of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of the State.

14. Non-Discrimination Clause: During the performance of this AGREEMENT, neither the Board nor the City of Woodland and its subcontractors shall unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The City of Woodland and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The City of Woodland and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are

incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. The City of Woodland and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The City of Woodland and the Board shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the AGREEMENT.

15. Child Support Compliance Act: For any Agreement in excess of $100,000, the City of Woodland acknowledges in accordance with Public Contract Code 7110, that:

    A. The City of Woodland recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

    B. The City of Woodland, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

16. Department of General Services Approval. This AGREEMENT shall not be effective until approval by the Department of General Services has occurred.

IN WITNESS WHEREOF, this AGREEMENT has been executed as of the day and year first above written.

THE CENTRAL VALLEY
FLOOD PROTECTION BOARD
STATE OF CALIFORNIA

By _____
Benjamin F. Carter, President

Date: 2/25/11

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

By _____
Jeremy D. Goldberg, Legal Counsel

Date: 3/1/11

THE CITY OF WOODLAND

By _____
Mark G. Deven
City Manager

Date: 2-14-11

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

By _____
Andrew Morris
Attorney for the City of Woodland

Date: 2/14/11