

AMENDMENT NUMBER 1  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE SAN MATEO COUNTY HARBOR DISTRICT  
FOR DESIGN AND CONSTRUCTION  
OF THE  
OYSTER POINT HARBOR PROJECT

THIS AMENDMENT NUMBER 1 is entered into this 6<sup>th</sup> day of DECEMBER, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, San Francisco District, and the San Mateo County Harbor District (hereinafter the "Non-Federal Sponsor"), represented by its General Manager.

WITNESSETH, THAT:

WHEREAS, construction of the Oyster Point Harbor Project at Oyster Point Marina in South San Francisco, CA was approved for design and construction by the South Pacific Division Engineer on May 18, 2007 pursuant to the authority contained in Section 107 of the Rivers and Harbors Act of 1960, Public Law 86-645, as amended (33 U.S.C. 577, hereinafter "Section 107");

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the authorized features consisting of removal of the existing wingwall portion of the breakwater and construction of a new breakwater wall to provide a more direct and wider approach for incoming and outgoing vessels on June 21, 2007 and construction of such features was initiated in the fall of 2008 completed in early 2009;

WHEREAS, on October 28, 2011, the South Pacific Division Engineer approved a Supplement to the 2007 Detailed Project Report to include a floating breakwater system as one of the authorized features of the Project, as it was determined that without such modification all of the project criteria would not be met;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), provide, inter alia, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 2022 of the Water Resources Development Act of 2007, Public Law 110-114, modified Section 107 to increase the funding limit from \$4,000,000 to \$7,000,000, so that that no more than \$7,000,000 shall be allotted for the Government's participation in planning, design, and construction of a small river and harbor improvement project at a single locality;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to reflect the change in Project features and the increase in the Government's participation in the planning, design, and construction of the Project;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the Project in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor 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 Sponsor, and facilitate the successful implementation of the Project.

NOW, therefore, the Government and the Non-Federal Sponsor agree as to amend the Agreement as follows:

1. The fifth Whereas Clause of the Agreement is amended by striking the clause and replacing it with the following:

“WHEREAS, the Secretary of the Army is authorized by Section 107 of the River and Harbor Act of 1960, Public Law 86-645, as amended (33 U.S.C. 577) to allot from certain appropriations an amount not to exceed \$35,000,000 per *fiscal year* for the construction of small river and harbor improvements projects and not more than \$7,000,000 in Federal funds shall be allotted for a project at any single locality;”

2. ARTICLE I – DEFINITIONS.

Paragraph B. is amended by striking the paragraph and replacing it with the following:

“B. The term “*general navigation features*” shall mean the removal of the existing wingwall portion of the breakwater; construction of a new breakwater wall; and construction of a floating breakwater system within the east basin of the Oyster Point Marina all as generally described in the Oyster Point Harbor Detailed Project Report dated May 16, 2007 and approved by the South Pacific Division Engineer on May 18, 2007 as modified by the Detailed Project Report Supplement dated September 8, 2011 and approved by the South Pacific Division Engineer on October 28, 2011. The term does not include any lands, easements, rights-of-way, *relocations; removals; betterments; or aids to navigation.*”



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

Paragraph G. is amended by striking “\$4,000,000” and replacing it with “\$7,000,000”.

4. ARTICLE VI – METHOD OF PAYMENT.

a. Paragraph A.1. is amended by striking the paragraph and replacing it with the following paragraph A.1.:

“1. As of the effective date of Amendment Number 1 to this Agreement, *total costs of construction of the general navigation features* are projected to be \$6,446,065, the Non-Federal Sponsor’s contribution of funds required by Articles II.D. and II.G. of this Agreement is projected to be \$452,241, the *non-Federal proportionate share* is projected to be 7 percent, the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor’s contribution of funds required by Article II.E. of this Agreement are projected to be \$0, the Government’s total financial obligations for additional work and the Non-Federal Sponsor’s contribution of funds for such obligations required by Article II.M. of this Agreement are projected to be \$0, 10 percent of *total costs of construction of the general navigation features* is projected to be \$644,607, the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations* is projected to be \$0 and the additional amount required by Article II.F. of this Agreement is projected to be \$644,607. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

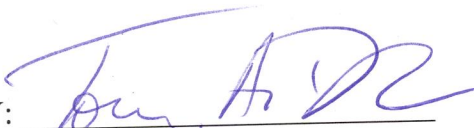
b. Paragraphs C., C.1., and C.2. are each amended by striking “\$4,000,000” and replacing it with “\$7,000,000”.

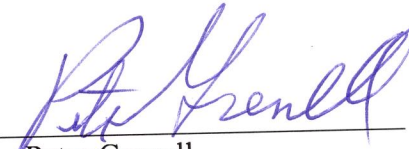
5. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

THE SAN MATEO COUNTY HARBOR DISTRICT

BY:   
Torrey A. DiCiro  
Lieutenant Colonel, U.S. Army  
District Engineer

BY:   
Peter Grenell  
General Manager  
San Mateo County Harbor District

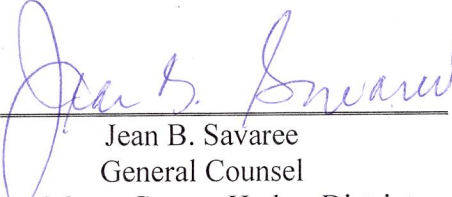
DATE: DEC 6<sup>th</sup>, 2011

DATE: Dec 6, 2011

CERTIFICATE OF AUTHORITY

I, Jean B. Savaree, do hereby certify that I am the principal legal officer of the San Mateo County Harbor District, that the San Mateo County Harbor District 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 San Mateo County Harbor District in connection with the Oyster Point Harbor Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the San Mateo County Harbor District have acted within their statutory authority.

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

  
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Jean B. Savaree  
General Counsel  
San Mateo County Harbor District

## 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.

  
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Peter Grenell  
General Manager

DATE: Dec. 5, 2011