

**AMENDMENT NUMBER 1  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY OF SANTA CRUZ, CALIFORNIA  
FOR CONSTRUCTION OF FLOOD CONTROL IMPROVEMENTS ON  
THE SAN LORENZO RIVER, CALIFORNIA PROJECT**

**THIS AMENDMENT** is entered into this 19<sup>th</sup> day of March, 2004, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District, Sacramento, and the CITY OF SANTA CRUZ, CALIFORNIA (hereinafter the "Non-Federal Sponsor"), represented by the City Manager of the City of Santa Cruz, California.

**WITNESSETH, THAT:**

**WHEREAS**, a flood control and habitat restoration project (hereinafter referred to as the "Project") at the City of Santa Cruz, Santa Cruz County, California was authorized by section 101(a)(5) of the Water Resources Development Act of 1996 (110 Stat. 3663);

**WHEREAS**, the Project is modified by section 306 of the Water Resources Development Act of 1999 (113 Stat. 299) to authorize the Secretary of the Army to include as a part of the Project bank protection measures (hereinafter referred to as the "bank protection features", as defined in Article I.c. of this Amendment) to be undertaken substantially in accordance with the report entitled "Bank Stabilization Concept, Laurel Street Extension", dated April 23, 1998;

**WHEREAS**, the Government and the Non-Federal Sponsor propose to modify the existing Project Cooperation Agreement, dated October 15, 1998 (hereinafter referred to as the "Agreement") to include the construction of the bank protection features on the San Lorenzo River in the City of Santa Cruz, California;

**WHEREAS**, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the bank protection features;

**WHEREAS**, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

**WHEREAS**, the Government and the Non-Federal Sponsor desire to add the bank protection features to the Project and to revise the allocation of total project costs accordingly; and

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

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

**1. ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS**

a. The first sentence of Article I.A. is amended by adding the following phrase at the end: “; and the bank protection features as generally described in the report entitled “Bank Stabilization Concept, Laurel Street Extension” dated April 23, 1998, and as further described in the Engineering Documentation Report and Environmental Assessment entitled “San Lorenzo River, California, Bank Protection”, dated October 2003, and approved by the District Engineer, U.S. Army Engineer District, Sacramento.”.

b. Article I.J. is amended by replacing “and II.F.2.” with the following: “II.F.2., II.O.2 and II.O.3.”.

c. Article I.P. is amended by adding the following sentence at the end: “For the purpose of implementing the bank protection features, the term shall also mean removal and replacement of the landward lane of Third Street and the landscaping, exterior electrical system, and irrigation system on the top of the bank all in the vicinity of the bank protection features.”

d. Article I is further amended by adding the following paragraphs at the end:

“S. The term “bank protection features” shall mean approximately 900 linear feet of bank protection wall on the right bank of the San Lorenzo River upstream of the Riverside Avenue bridge, as well as the following measures which will be undertaken to replace vegetation and habitat removed or damaged by construction of the bank protection wall: log crib walls, root wad vanes, boulders, and in-stream vegetation placed at the bottom of the Bank Protection wall.”

“T. The term “total project bank protection costs” shall mean that portion of the total project costs that the Government assigns to the bank protection features.”

**2. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR** is amended by adding the following paragraph at the end:

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

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

**2. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the bank protection features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the bank protection features.**

**3. If the Government projects that the value of the Non-Federal Sponsor's contributions for the bank protection features under paragraph O.1. and O.2. of this Article and Articles X and XV.A. of this Agreement will be less than 35 percent of total project bank protection costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 35 percent of total project bank protection costs.**

**4. If the Government determines that the value of the Non-Federal Sponsor's contributions for the bank protection features under paragraph O.2. of this Article and Articles X and XV.A. of this Agreement has exceeded 45 percent of total project bank protection costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total project bank protection costs. After such a determination, the Government, in its sole discretion, may provide any remaining bank protection feature lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining bank protection feature relocations on behalf of the Non-Federal Sponsor."**

### **3. ARTICLE III – LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE**

**a. The second sentence of Article III.A. is amended by replacing "and the habitat restoration features" with the following phrase: "the habitat restoration features, and the bank protection features."**

**b. The second sentence of Article III.B. is amended replacing "and the habitat restoration features" with the following phrase: "the habitat restoration features, and the bank protection features."**

**c. The second sentence of Article III.C. is amended by replacing "and the habitat restoration features" with the following phrase: "the habitat restoration features, and the**

bank protection features."

d. The last sentence of Article III.D. is amended by replacing "or total project habitat restoration costs" with the following phrase: "total project habitat restoration costs or total project bank protection costs."

#### 4. ARTICLE IV – CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

a. Article IV.A. is amended by adding the following sentence after the third sentence: "The Non-Federal Sponsor shall receive credit toward its share of total project bank protection costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement for the bank protection features, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement for the bank protection features."

b. Article IV.C. is amended by adding the following paragraph at the end:

"4. Any credit afforded for the value of relocations performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws."

#### 5. ARTICLE V – PROJECT COORDINATION TEAM

The first sentence of Article V.C. is amended by adding the following phrase after "contract costs;": "the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations;".

#### 6. ARTICLE VI - METHOD OF PAYMENT

a. The second sentence of Article VI.A. is amended by adding the phrase "of total project bank protection costs," after "of total habitat restoration costs," each time it appears in the sentence, and by replacing "and II.G." with "II.G. and II.O."

b. The first sentence of Article VI.B. is amended by replacing "and II.F.2." with "II.F.2., II.O.1. and II.O.3."

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

a. The first sentence of Article X.B. is amended by replacing "the Single Audit Act of 1984" with "the Single Audit Act Amendments of 1996".

b. The first sentence of Article X.C. is amended by replacing "the Single Audit Act" with "the Single Audit Act Amendments of 1996".

8. ARTICLE XI - FEDERAL AND STATE LAWS is amended by deleting the Article in its entirety after the title and by replacing it with new Article XI as follows:

"In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; all applicable federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)); and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal development and implementation of floodplain management plans."

#### 9. ARTICLE XIV - TERMINATION OR SUSPENSION

The first sentence of Article XIV.A. is amended by adding "II.O.," after "II.N.,".

#### 10. ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

a. The first sentence of Article XIX is amended by inserting "A." before the beginning of the sentence, by replacing the period at the end of the sentence with a comma, and by adding the following at the end: "authorized by Section 101(a)(5) of the Water Resources Development Act of 1986, Public Law 104-303, which are the total project costs as defined in Article I.E. of this Agreement minus the total project bank protection costs as defined by Article I.T. of this Agreement".

b. ARTICLE XIX is further amended by adding the following paragraph at the end:

"B. The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project bank protection costs, as defined by Article I.T. of this Agreement, for the bank protection features, as defined by Article I.S. of this Agreement, authorized as a modification of the San Lorenzo River, California project. Notwithstanding any other provision of this Agreement, the Government shall not make a new financial obligation for bank protection features, make an expenditure for bank protection features, or afford credit toward total project bank protection costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project bank protection costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of Amendment Number 1 to this Agreement, (date) 19 Mar 04, this maximum amount is estimated to be \$6,200,000, as calculated in accordance with ER 1105-2-100 using October 1, 2003, price levels and allowances for projected future inflation. The Government shall adjust this amount in accordance with Section 902."

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

THE DEPARTMENT OF THE ARMY

BY: 

Michael J. Conrad  
Colonel, Corps of Engineers  
District Engineer

THE CITY OF SANTA CRUZ

BY: 

Richard C. Wilson  
City Manager, City of  
Santa Cruz, California

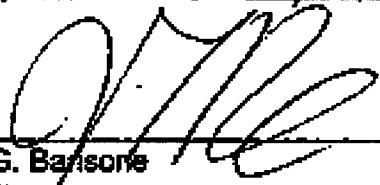
DATE: 19 Mar 04

DATE: 3-16-04

CERTIFICATE OF AUTHORITY

I, John G. Barisone do hereby certify that I am the principal legal officer of the City of Santa Cruz, California, that the City of Santa Cruz, California is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Santa Cruz, California, as amended by Amendment Number 1 to the Agreement, in connection with the San Lorenzo River, California Project, and to pay damages in accordance with the terms of the amended Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Santa Cruz, California have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
16<sup>th</sup> day of MARCH 2004.

  
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John G. Barisone  
City Attorney  
City of Santa Cruz, California

## CERTIFICATION REGARDING LOBBYING

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

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

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

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

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



Richard C. Wilson  
City Manager, City of  
Santa Cruz, California

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

3-16-04