AMENDMENT NO. 2 TO THE PROJECT COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE STATE OF CALIFORNIA STATE COASTAL CONSERVANCY FOR THE HAMILTON WETLANDS RESTORATION PROJECT

WITNESSETH, THAT:

WHEREAS, Section 101(b)(3) of the Water Resources Development Act of 1999, Public Law 106-53, authorizes the Secretary of the Army to implement an ecosystem and wetland restoration project at the Hamilton Army Airfield and adjacent properties, City of Novato, Marin County, California;

WHEREAS, on April 22, 2002, the Government, and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for implementation, operation, and maintenance of the project authorized by Section 101(b)(3) of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, the Government and the Non-Federal Sponsor amended the 2002 Agreement on February 9, 2005 to provide for accelerated funds (Amendment Number 1);

WHEREAS, the ecosystem and wetland restoration project authorized by Section 101(b)(3) of the Water Resources Development Act of 1999, Public Law 106-53, was modified by Section 3018 of the Water Resources Development Act of 2007, Public Law 110-114, to direct the Secretary to construct the project substantially in accordance with the Report of the Chief of Engineers, dated July 19, 2004 (hereinafter the "Authorized Project"), by adding the Bel Marin Keys Unit V site and recreation features;

WHEREAS, the Government and the Non-Federal Sponsor desire to further amend the 2002 Agreement to include a portion of the San Francisco Bay Trail recreation feature in the features to be undertaken (hereinafter "Amendment No. 2");

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

WHEREAS, the Government and 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 follows:

- 1. ARTICLE I DEFINITIONS AND GENERAL PROVISIONS is amended as follows:
- a. Paragraph A. is amended by striking the paragraph and replacing it with the following paragraph A:
- "A. The term "Project" shall mean the ecosystem restoration features and the recreation features as defined in this paragraph.
- 1. The term "ecosystem restoration features" shall mean the restoration of approximately 990 acres of habitat, including over 570 acres of coastal salt marsh and seasonal wetlands, along with approximately 120 acres of tidal channels and intertidal habitats, through the construction of approximately 18,200 feet of perimeter levees around the landward boundary of the wetland; construction of approximately 2,200 feet of additional levees to protect and permit access to the Novato Sanitary District (hereinafter the "NSD") wastewater pipeline; removing existing buildings and structures; providing temporary drainage; constructing berms and internal peninsulas; placement and consolidation of up to the site capacity of approximately 10.6 million cubic yards (mcy) of suitable dredged or excavated material from projects in the San Francisco Bay area; placement of fill on approximately 6,000 feet of the wetland side of an existing levee to create a wildlife corridor; lowering the bayward levee; breaching portions of the bayward levee located on Project lands as provided in Article II.L. of this Agreement; cutting channels through the outboard marsh; and implementation of a 13-year monitoring and adaptive management plan, all as generally described in the Hamilton Wetlands Restoration Plan Feasibility Report, dated December 1998, and the Environmental Impact Report/Environmental Impact Statement, dated December 1998, and approved by the Chief of Engineers on August 13, 1999.
- 2. The term "recreation features" shall mean completion of approximately 14,000 feet of the San Francisco Bay Trail located along the western boundary of the ecosystem restoration features between Pacheco Pond and a point approximately 700 feet from the existing outboard marsh as generally described in the Post Authorization Change Engineering Documentation Report dated June 2012, and approved by the Division Engineer, South Pacific Division on July 18, 2012."

- b. Paragraph B. is amended by adding the following paragraphs 1. and 2. at the end thereof:
- "1. The term "total ecosystem restoration costs" shall mean that portion of total project costs allocated to ecosystem restoration features.
- 2. The term "total recreation costs" shall mean that portion of total project costs allocated to recreation features."
- c. Paragraph E. is amended by striking "Article II.D.2." and inserting in its place "Articles II.D.1.b., II.D.2.b., and II.D.2.d.".
- d. Paragraph L. is amended by striking "Project" and inserting in its place "ecosystem restoration features", and by striking "its" and inserting in its place "their".
- e. Paragraph M. is amended by inserting the phrase "to adjust the ecosystem restoration features" before "taken to respond" and after "project management actions" in the first sentence, and by inserting the phrase "to the ecosystem restoration features" before "to obtain" and after "adjustments are necessary" in the last sentence.
- 2. ARTICLE II OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR is amended as follows:
- a. Paragraph A.3. is amended by striking "\$61,393,622" in the first sentence and replacing it with "\$120,000,000".
- b. Paragraph A. is amended by adding the following paragraph 4. at the end thereof:
- "4. The Government shall allocate total project costs between total ecosystem restoration costs and total recreation costs."
- c. Paragraph C. is amended by striking the paragraph and replacing it with the following:
- "C. When the District Engineer determines that, except for monitoring and adaptive management, the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter "OMRR&R Manual") and with copies of all the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. When the Government breaches a segment of the bayward levee in accordance with the provisions of this Agreement, the Government shall consider the portion of the Project corresponding to the breached segment of the bayward levee to be complete, except for monitoring and adaptive management.

- 1. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article IX of this Agreement. Further, on the date of such notice, the period of implementation of monitoring and adaptive management shall begin for the entire Project, or functional portion of the Project, as applicable. The monitoring and adaptive management shall be performed concurrently with the Non-Federal Sponsor's responsibilities for operation, maintenance, repair, replacement, and rehabilitation in accordance with Article IX of this Agreement.
- 2. Upon the District Engineer's determination that, except for monitoring and adaptive management, the entire Project is complete, the Government shall conduct an interim accounting in accordance with Article VI.D. of this Agreement, and furnish the results to the Non-Federal Sponsor. Further, upon completion of the Project or termination of this Agreement, the Government shall amend the interim accounting to complete the final accounting, in accordance with Article VI.D. of this Agreement, and furnish the results to the Non-Federal Sponsor."
- d. Paragraphs D and D.1.-3. are amended by striking the paragraphs and replacing them with the following paragraphs D and D.1. D.2.:
- "D. The Non-Federal Sponsor shall contribute to total project costs in accordance with the provisions of this paragraph.
- 1. The Non-Federal Sponsor shall contribute 25 percent of total ecosystem restoration costs in accordance with the provisions of this paragraph.
- a. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow areas that the Government determines the Non-Federal Sponsor must provide for the implementation, operation, and maintenance of the ecosystem restoration features and shall perform or ensure performance of all relocations that the Government determines to be necessary for the implementation, operation, and maintenance of the ecosystem restoration features.
- b. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D.l.a. of this Article and Articles V, XI, XVI.A., and XIX of this Agreement that are determined by the Government to be attributable to the ecosystem restoration features will be less than 25 percent of total ecosystem restoration costs, the Non-Federal Sponsor shall provide a 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 25 percent of total ecosystem restoration costs.
- c. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.l.a and D.l.b. of this Article and Articles V, XI, XVI.A., and XIX of this Agreement that are determined by the Government to be attributable to the ecosystem restoration features has exceeded 25 percent of total ecosystem restoration costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for

any such value in excess of 25 percent of total ecosystem restoration costs. After such a determination, and reasonable consultation with the Non-Federal Sponsor, the Government, in its sole discretion, may provide any remaining lands, easements, rights-of-way, and suitable borrow areas required for the ecosystem restoration features and perform any remaining relocations necessary for the ecosystem restoration features on behalf of the Non-Federal Sponsor. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow areas or performance of relocations by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XVI.C. of this Agreement.

- 2. The Non-Federal Sponsor shall contribute 50 percent of total recreation costs in accordance with the provisions of this paragraph.
- a. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, and suitable borrow areas that the Government determines the Non-Federal Sponsor must provide for the implementation, operation, and maintenance of the recreation features and shall perform or ensure performance of all relocations that the Government determines to be required or to be necessary for the implementation, operation, and maintenance of the recreation features.
- b. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 50 percent of total recreation costs if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the recreation features will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph D.2.a. of this Article, as determined in accordance with Article IV of this Agreement; and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article XI, Article XVI.A. and Article XIX of this Agreement.
- c. The Government, subject to the availability of funds and as limited by paragraph D.2.d. of this Article, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of total recreation costs if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the recreation features has exceeded 50 percent of total recreation costs: (a) the value of the Non-Federal Sponsor's contributions under paragraph D.2.b. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph D.2.a. of this Article, as determined in accordance with Article IV of this agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article XI, Article XVI.A. and Article XIX of this Agreement. After such a determination, the Government, in its sole discretion, may provide any remaining lands, easements, rights-of-way, and suitable borrow areas required for the recreation features and perform any remaining relocations necessary for the recreation features on behalf of the Non-Federal Sponsor. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow areas or performance of relocations by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XVI.C. of this Agreement.

- d. Notwithstanding any other provision of this paragraph, the Government's share of total recreation costs shall not exceed an amount equal to 10 percent of the Government's share of total ecosystem restoration costs. The Non-Federal Sponsor shall be responsible for all total recreation costs in excess of this amount and shall pay any such costs in accordance with Article VI.B. of this Agreement."
- e. Paragraph F. is amended by striking "total project costs" in the first and second sentences and replacing it with "total ecosystem restoration costs".
- f. Paragraph I. is amended by striking "Article II.D." and replacing it with "Articles II.D.1.b., II.D.2.b., and II.D.2.d.".
- g. Paragraph M. is amended by:
- 1. Striking each occurrence of "Article II.D." and inserting in its place "Articles II.D.1.b., II.D.2.b., and II.D.2.d.";
- 2. Striking "period of construction" and replacing it with "period of implementation"; and
- 3. Striking each occurrence of "construction of the Project" and replacing it with "implementation of the Project".
- h. Paragraph N. is amended by:
- 1. Striking each occurrence of "Article II.D." and inserting in its place "Articles II.D.1.b., II.D.2.b., and II.D.2.d.";
- 2. Striking each occurrence of "period of construction" and replacing it with "period of implementation"; and
- 3. Striking each occurrence of "construction of the Project" and replacing it with "implementation of the Project".
- i. The following paragraphs are added after Paragraph N.:
- "O. The Non-Federal Sponsor shall not use the ecosystem restoration features, or the lands, easements, and rights-of-way required pursuant to Article III of this Agreement for such features, as a wetlands bank or mitigation credit for any other project.
- P. The Non-Federal Sponsor shall keep the recreation features, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms."
- 3. ARTICLE III LANDS, RELOCATIONS, AND PUBLIC LAW 91-646 COMPLIANCE is amended as follows:

- a. Paragraph A., second sentence, is amended by inserting "respectively, for the ecosystem restoration features and for the recreation features," after "the Non-Federal Sponsor must provide," and before "in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph".
- b. Paragraph B., second sentence, is amended by inserting "that are necessary, respectively, for the ecosystem restoration features and for the recreation features" after "of such relocations" and before "in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph".
- 4. ARTICLE IV CREDIT FOR LANDS AND RELOCATIONS is amended by striking the first sentence of Paragraph A. and inserting in its place the following:

"The Government shall include in total project costs and afford credit towards the Non-Federal Sponsor's share of total ecosystem restoration costs for the value of the lands, easements, rights-of-way, and suitable borrow areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement for the ecosystem restoration 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 ecosystem restoration features. The Government shall also include in total project costs and afford credit towards the Non-Federal Sponsor's share of total recreation costs for the value of the lands, easements, rights-of-way, and suitable borrow areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement for the recreation 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 recreation features."

5. ARTICLE VI – METHOD OF PAYMENT is amended as follows:

a. Paragraph A. is amended by striking the second and third sentences and inserting the following in their place:

"By March 1st of each year and at least quarterly thereafter until the end of the period of implementation, the Government shall provide the Non-Federal Sponsor with a report setting forth all Project expenditures made to date, all contributions provided to date and the current projections of total project costs, of total ecosystem restoration costs, of total recreation costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of each party's share of total recreation costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D.1.b., II.D.2.b., II.D.2.d., and II.E. of this Agreement, of the non-Federal proportionate share, of the credit to be afforded in accordance with Article II.N. of this Agreement, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of Amendment No. 2 to this Agreement, total project costs are projected to be \$116,718,000; total ecosystem restoration costs are projected to be \$114,538,000; the Non-Federal sponsor's contribution of funds required by Article II.D.1.b. of this Agreement is projected to be \$26,001,000; total recreation costs are

projected to be \$2,180,000; and the Non-Federal Sponsor's contribution of funds required by Article II.D.2.b. is projected to be \$1,090,000."

- b. Paragraph B. is amended by striking "Article II.D.2." in the first sentence and replacing it with "Articles II.D.1.b., II.D.2.b., and II.D.2.d.".
- c. Paragraphs D., D.1., and D.2 are amended by striking the paragraphs and inserting in their place the following:
- "D. Upon the District Engineer's determination that, except for monitoring and adaptive management, the entire Project is complete and all relevant claims and appeals and eminent domain proceedings have been resolved, the Government shall conduct an interim accounting and furnish the results to the Non-Federal Sponsor. Further, upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting or amend the previous interim accounting, as applicable, and furnish the Non-Federal Sponsor with written notice of the results of such interim or amended interim accounting, as applicable. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine total project costs, total ecosystem restoration costs, and total recreation costs. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting. The interim or final accounting shall also determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.
- 1. Should the interim or final accounting, as applicable, show that costs due to any betterments provided in accordance with Article II.B. of this Agreement plus the Non-Federal Sponsor's total required shares of total ecosystem restoration costs and total recreation costs, exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, 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, San Francisco District" 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 costs due to any betterments provided in accordance with Article II.B. of this Agreement plus the total contributions provided by the Non-Federal Sponsor for total ecosystem restoration costs and total recreation costs exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by Article II.D.2.d. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the

Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. However, if the final accounting results from termination pursuant to Article XV.C. of this Agreement, and funds were accelerated in accordance with Article II.M. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of accelerated funds that were not obligated by the Government for work on the Project, subject to the availability of funds."

- 6. ARTICLE VIII MONITORING AND ADAPTIVE MANAGEMENT is amended as follows:
- a. Paragraph A., first sentence, is amended by inserting the phrase "for the ecosystem restoration features" before "in coordination" and after "monitoring and adaptive management plan".
- b. Paragraph A., second sentence, is amended by striking "project" after "to adjust the" and before "; estimated monitoring" and inserting in its place "ecosystem restoration features", and by striking "Project" after "likely success of the" and before "with respect to" and inserting in its place "ecosystem restoration features".
- c. Paragraph C. is amended by striking "Project" after "adaptive management of the" and before "until such time" and inserting in its place "ecosystem restoration features".
- d. The following is added as new Paragraph E.:

"E. In no event shall monitoring and adaptive management activities be performed on the recreation features."

7. ARTICLE XX – SECTION 902 PROJECT COST LIMITS is amended by striking the Article and replacing it with the following:

"The Non-Federal Sponsor understands that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of total costs for the Authorized Project, of which the Project is a separable element. On the effective date of Amendment No. 2 to this Agreement, the maximum amount of total costs for the Authorized Project, which is the sum of total project costs for the Project and the costs for all other separable elements of the Authorized Project, is estimated to be \$308,873,000, as calculated in accordance with Engineer Regulation 1105-2-100, using October 1, 2012 price levels, and including allowances for projected future inflation. The Government shall adjust such maximum amount of total costs for the Authorized Project, in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), when necessary."

- 8. ARTICLE XXI OBLIGATIONS OF FUTURE APPROPRIATIONS is amended by striking "Article II.D." in Paragraph B. and inserting in its place "Articles II.D.1.b., II.D.2.b., and II.D.2.d.".
- 9. All other terms and conditions of the Agreement, as previously amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No 2. to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

John K. Baker, P.E.

Lieutenant Colonel, US Army

District Engineer

DATE: 2013

STATE OF CALIFORNIA, acting by and through the CALIFORNIA STATE

COASTAL GONSERVANCY

BY:

Samuel Schuchat Executive Officer

DATE:

CERTIFICATE OF AUTHORITY

I, Glenn Alex, do hereby certify that I am the principal legal officer for the California State Coastal Conservancy, that the California State Coastal Conservancy is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No 2. to the Agreement between the Department of the Army and the California State Coastal Conservancy in connection with the Hamilton Wetlands Restoration 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 California State Coastal Conservancy have acted within their statutory authority.

	IN WITNESS	WHEREOF, I have made and executed this certification this	19
day of	Dance	_ 2013.	

Glenn Alex

Chief Counsel

California State Coastal Conservancy

Henr C-all

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.

Samuel Schuchat

Executive Officer

California State Coastal Conservancy

DATE: