

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE SANTA CLARA VALLEY WATER DISTRICT  
AND  
THE CALIFORNIA STATE COASTAL CONSERVANCY  
FOR  
THE SOUTH SAN FRANCISCO BAY SHORELINE, CALIFORNIA  
FLOOD RISK MANAGEMENT, ECOSYSTEM RESTORATION, AND RECREATION  
PROJECT

THIS AGREEMENT is entered into this 14<sup>th</sup> day of FEBRUARY, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the San Francisco District, and the Santa Clara Valley Water District, represented by its Chief Executive Officer and the California State Coastal Conservancy, represented by its Executive Officer. The Santa Clara Valley Water District and the California State Coastal Conservancy are hereinafter referred to as the "Non-Federal Sponsors".

WITNESSETH, THAT:

WHEREAS, construction of the locally preferred plan for the South San Francisco Bay Shoreline flood risk management, ecosystem restoration, and recreation project in Santa Clara County, California (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by the Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, § 1401(6)(1), 130 Stat. 1628, 1714 (2016);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Non-Federal Sponsors are responsible for 100 percent of the construction costs in excess of that required for construction of the national economic development/national ecosystem restoration plan (hereinafter the "NED/NER Plan", as defined in Article I.B. of this Agreement);

WHEREAS, Section 4027 of the Water Resources Development Act of 2007, Public Law 110-114, requires the Government to credit towards the non-federal share of the cost of the Project the funds expended by the Non-Federal Sponsors for acquisition of land (hereinafter the "Section 4027 lands") that are required for the Project and owned by the United States Fish and Wildlife Service if such lands, or portion thereof, were not previously credited to the Non-Federal Sponsors for another Federal project and such lands were not acquired to meet any mitigation requirement of the Non-Federal Sponsors;

WHEREAS, the costs incurred by the Non-Federal Sponsors' for the Section 4027 lands are currently estimated at \$8,797,539 with \$8,651,020 allocated to the NED/NER Plan for ecosystem restoration and \$146,519 allocated to the NED/NER Plan for flood risk management;

WHEREAS, for the ecosystem restoration features allocated to the NED/NER Plan, the Non-Federal Sponsors have waived reimbursement for the value of real property interests, including the Section 4027 lands allocated to NED/NER Plan for ecosystem restoration, and relocations that exceeds 35 percent of the NED/NER Plan costs for initial and remaining construction of such features;

WHEREAS, placement area improvements, as defined in Article I.E. of this Agreement, are limited to that required for the flood risk management features allocated to the NED/NER Plan and provided by the Non-Federal Sponsors in accordance with 33 U.S.C. 2213;

WHEREAS, to the extent that appropriations provided under the Construction heading, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter "BBA 2018") are available and used to undertake construction of the NED/NER Plan, the Government is authorized to finance the non-Federal cash contributions required for the Project, currently estimated at \$193,700,067, which includes the 5 percent cash contribution for the flood risk management features of the NED/NER Plan, in accordance with the provisions of Section 103(k) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(k)), with the interest rate for deferred payments determined in accordance with Section 106 of the Water Resources Development Act of 1986 (33 U.S.C. 2216);

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsors' full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term "Project" means the locally preferred plan which includes flood risk management features consisting of an increase in levee height from 12.5 feet NAVD 88 to 15.2 feet NAVD 88, ecosystem restoration features consisting of a larger ecotone transition zone constructed on an approximate 30H:1V slope in the vicinity of ponds A12/A13 and A18, whereas upon completion of the ecotone and first set of breaching of the formally used salt ponds, initial construction is complete and recreation features consisting of pedestrian bridges

crossing the Union Pacific Railroad tracks and Artesian Slough, viewing platforms and benches adjacent to the restored tidal marsh, and signs. The FRM levee would also be accessible to the public for recreational purposes as generally described in the South San Francisco Bay Shoreline Phase I Study, Final Integrated Document – Final Interim Feasibility Study with Environmental Impact Statement/ Environmental Impact Report, September 2015, Approved by Chief of Engineers 18 Dec 2015. (hereinafter the “Decision Document”).

B. The term “NED/NER Plan” means the national economic development/national ecosystem restoration plan which includes flood risk management features consisting of a levee height of 12.5 feet NAVD 88 and a total levee length of approximately 4 miles with a flood gate at the Union Pacific Railroad tracks and a gate closure system across Artesian Slough, ecosystem restoration features consisting of a phased restoration formerly used Salt Ponds A9–A15 (owned by the USFWS) and Pond A18 (City of San José lands) with a bench as part of the levee construction but resulting in incidental transitional habitat and recreation features consisting of a pedestrian bridges crossing the Union Pacific Railroad tracks and Artesian Slough, viewing platforms and benches adjacent to the restored tidal marsh, and signs. The FRM levee would also be accessible to the public for recreational purposes, as generally described in the Decision Document.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsors in accordance with the terms of this Agreement that are directly related to design and construction of the Project. The term includes, but is not necessarily limited to: the Government’s costs and the Non-Federal Sponsors’ creditable contributions pursuant to the terms of the Design Agreement executed on July 11, 2016; the costs of historic preservation activities except for data recovery for historic properties; the Government’s costs of engineering, design, and construction, including cost shared monitoring and adaptive management; the Government’s supervision and administration costs; the Non-Federal Sponsors’ creditable costs for providing real property interests (including the Section 4027 lands), placement area improvements, relocations and in-kind contributions that are allocated by the Government to the NED/NER Plan; and the costs incurred by the Non-Federal Sponsors for the real property interests, placement area improvements, relocations, and design and construction work that are allocated by the Government to the LPP incremental costs. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation by the Government and the Non-Federal Sponsors in the Project Coordination Team to discuss significant issues and actions; audits; additional work; or betterments; or the Non-Federal Sponsors’ cost of negotiating this Agreement.

D. The term “NED/NER Plan costs” means the sum of all construction costs that would have been incurred by the Government and Non-Federal Sponsors had the NED/NER Plan been constructed.

E. The term “LPP incremental costs” means construction costs of the Project that are in excess of the NED/NER Plan costs, as determined by the Government.

F. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

G. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto for the flood risk management features allocated to the NED/NER Plan), or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term “placement area improvements” means the improvements required on real property interests for the flood risk management features allocated to the NED/NER Plan to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

I. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for San Francisco District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

J. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsors for the NED/NER Plan that are identified as being integral to the Project by the Division Commander for South Pacific Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsors for the NED/NER Plan to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the NED/NER Plan.

K. The term “betterment” means a difference in construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to construction of that element.

L. The term “fiscal year” means one year beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup> of the following year.

M. The term “additional work” means items of work related to, but not cost shared as a part of, the Project that the Government will undertake on the Non-Federal Sponsors’ behalf while the Government is carrying out the Project, with the Non-Federal Sponsors responsible for all costs and any liabilities associated with such work.

N. The term “cost shared monitoring” means those activities, including the collection and analysis of data, for a period not to exceed 10 years after completion of construction of the

Project, that the Government identifies as necessary to determine if predicted outputs of the ecosystem restoration features are being achieved and to determine if adaptive management is necessary, as generally described in the Decision Document. The term does not include monitoring after the Division Commander has determined that ecological success has been achieved or monitoring beyond the 10-year period, with any such monitoring the responsibility of the Non-Federal Sponsors, at no cost to the Government.

O. The term “cost shared adaptive management” means physical modifications to the ecosystem restoration features, in response to the cost shared monitoring results to ensure the functionality and benefits of the ecosystem restoration features are garnered, as explicitly described in the performance standards section of the adaptive management plan or other sections in the Decision Document. The term does not include operational changes, which are the responsibility of the Non-Federal Sponsors, at no cost to the Government, as part of operation and maintenance of the ecosystem restoration features.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake initial construction of the Project, using funds provided in BBA 2018 and funds provided by the Non-Federal Sponsors. After completion of initial construction of the Project, which includes construction of the ecotone work for the ecosystem restoration features, all remaining construction of the ecosystem features (hereinafter the “remaining construction”) and cost shared monitoring and adaptive management of the ecosystem restoration features, are subject to receiving funds appropriated by the Congress and funds provided by the Non-Federal Sponsors.

B. The Non-Federal Sponsors shall contribute a minimum of 35 percent, up to a maximum of 50 percent, of the NED/NER Plan costs allocated by the Government to flood risk management; 35 percent of NED/NER Plan costs allocated by the Government to ecosystem restoration; 50 percent of construction costs allocated by the Government to recreation; and 100 percent of the LPP incremental costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsors shall provide the real property interests (including the Section 4027 lands), placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsors’ estimated credits for real property interests, placement area improvements, and relocations required for the flood risk management features will exceed 45 percent of NED/NER Plan costs for flood risk management, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations for such flood risk management features with the cost of such work included as a part of the Government’s cost of initial construction. Nothing in this provision affects the Non-Federal Sponsors’ responsibility under Article IV for the costs of any cleanup and response related thereto.

2. In providing in-kind contributions, if any, the Non-Federal Sponsors shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsors shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsors shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. For initial construction of the Project, after calculating the 5 percent cash contribution for NED/NER Plan costs for flood risk management that otherwise would have been required from the Non-Federal Sponsors and then considering the estimated amount of credit by project purpose that has and will be afforded to the Non-Federal Sponsors for the NED/NER Plan pursuant to paragraphs B.1. and B.2., above, that are allocated by the Government to the NED/NER Plan costs, the Government shall determine the estimated additional cash contribution that otherwise would have been required from the Non-Federal Sponsors to meet their minimum 35 percent share of NED/NER Plan costs for flood risk management, their 35 percent share of NED/NER Plan costs for ecosystem restoration, and their 50 percent share of construction costs for recreation. To the extent BBA 2018 funds are available for the NED/NER Plan, the Government, in accordance with the provisions of Article VI.B., may defer payment of the cash contributions, including the 5 percent cash contribution, that the Non-Federal Sponsors would have otherwise been required to provide during initial construction of the Project in order to meet their cost share for the NED/NER Plan.

4. After considering the real property interests, placement area improvements, relocations, and design and construction work provided by the Non-Federal Sponsors for initial construction of the Project that are determined by the Government to be in excess of that required for the NED/NER Plan, the Government shall determine the funds required from the Non-Federal Sponsors to cover the remaining LPP incremental costs for initial construction, and the Non-Federal Sponsors shall provide such funds in advance of the Government performing the work in accordance with Article VI.D.

5. For the remaining construction and cost shared monitoring and adaptive management following initial construction of the Project, the following applies:

a. After considering the estimated amount of credit, if any that will be afforded to the Non-Federal Sponsors pursuant to paragraphs B.1. and B.2., above, for the remaining construction, and paragraph B.2., above, for the cost shared monitoring and adaptive management, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsors to meet their 35 percent share of NED/NER Plan costs for the remaining construction and cost shared monitoring and adaptive management for the then-current fiscal. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsors shall provide the full amount of such funds to the Government in accordance with Article VI.C.

b. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of the remaining construction and cost shared monitoring and adaptive management, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required

from the Non-Federal Sponsors during that fiscal year to meet their 35 percent share of NED/NER Plan costs for the remaining construction and cost shared monitoring and adaptive management. Not later than September 30<sup>th</sup> prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsors from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsors in writing and the Non-Federal Sponsors, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government in the OMRR&R Manual. The Government and the Non-Federal Sponsors shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsors now or hereafter own or control to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsors are failing to perform their obligations under this Agreement and the Non-Federal Sponsors do not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsors of their obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. Not less than once each year, the Non-Federal Sponsors shall inform affected interests of the extent of risk reduction afforded by the Project.

G. The Non-Federal Sponsors shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

H. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsors shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsors shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

J. The Non-Federal Sponsors shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, reduce the outputs produced by the ecosystem restoration features, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. The Non-Federal Sponsors shall not use the ecosystem restoration features, or any real property interests required for construction, operation, and maintenance of such features, as a wetlands bank or mitigation credit for any other project.

L. The Non-Federal Sponsors shall keep the recreation features, access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

M. The Non-Federal Sponsors shall not use Federal program funds to meet any of their obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

N. In carrying out their obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

O. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsors may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsors' costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

P. The Non-Federal Sponsors may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsors. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsors, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

Q. Notwithstanding any other provision in this Agreement, in the event that there are insufficient BBA 2018 funds available to complete initial construction of the NED/NER Plan, such completion shall be subject to receiving Federal funds appropriated by the Congress. To the extent that Federal funds other than BBA 2018 funds are used, financing is not available for any required cash contribution, and the Non-Federal Sponsors must provide such amounts in accordance with the following:

1. The Government shall determine the amount of funds required from the Non-Federal Sponsors to meet their cost share for the NED/NER Plan by project purpose for the then-current fiscal year. No later than 30 calendar days after receipt of notification from the Government, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.B.1.c.

2. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsors with a written estimate of the full amount of funds required from the Non-Federal Sponsors during that fiscal year to meet their cost share for the NED/NER Plan by project purpose. Not later than September 1st prior to that fiscal year, the

Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.B.1.c.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsors must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition. The Non-Federal Sponsors shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsors shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsors with a written notice to proceed with such improvements. The Non-Federal Sponsors shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. The Non-Federal Sponsors shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsors written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsors may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsors, in accordance with Article VI.D., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsors except, if acquired by eminent

domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsors by quitclaim deed or deeds. The Non-Federal Sponsors shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsors does not alter the Non-Federal Sponsors' responsibility under Article IV for the costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsors assure that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsors will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

#### ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsors shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsors fail to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal Sponsors and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE V - DOCUMENTATION OF CONSTRUCTION COSTS AND CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs the creditable NED/NER Plan costs and LPP incremental costs incurred by the Non-Federal Sponsors in accordance with the provisions of this Article.

##### B. Documentation of Construction Costs.

1. NED/NER Plan costs. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsors shall provide the Government with documents sufficient to determine the amount of credit to be provided for the privately owned real property interests for the NED/NER Plan costs in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items allocated to the NED/NER Plan in accordance with paragraph C. of this Article.

2. LPP incremental costs. To the maximum extent practicable, the Non-Federal Sponsors shall provide the Government with documentation of LPP incremental costs incurred no less frequently than on a quarterly basis for inclusion in the total construction costs. Such documentation may include invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees; and eligible payments for privately owned real property interests, including appraisals, and eligible incidental acquisition costs, and for providing placement area improvements, relocations, and design and construction work. Only LPP incremental costs incurred after the effective date of this Agreement are included in the construction costs, unless such costs were required for work covered by an In-Kind Memorandum of Understanding (hereinafter "In-Kind MOU"). The Government may audit such costs in accordance with Article X.B. to determine reasonableness, allocability, and allowability.

C. The Government and the Non-Federal Sponsors agree that the amount of costs eligible for credit that are allocated by the Government to the NED/NER Plan costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. Except for the Section 4027 lands allocated to the NED/NER Plan, only costs associated with real property interests acquired from private owners after the effective date of this Agreement and allocated to the NED/NER Plan are eligible for credit, unless such real property interests acquired from private owners were required for in-kind contributions covered by an In-Kind MOU. The Non-Federal Sponsors shall obtain, for each real property interest acquired from a private owner, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests acquired from private owners that are required for in-kind contributions covered by an In-Kind MOU, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsors provide the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-

Federal Sponsors are unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsors the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsors exceed the approved appraised amount, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall notify the Government in writing of their intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsors shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsors shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsors may use the amount set forth in their appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the private owner is donating the real property interest to the Non-Federal Sponsors and releases the Non-Federal Sponsors in writing from their obligation to appraise the real property interest, and the Non-Federal Sponsors submit to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsors determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsors determine that an appraisal is unnecessary, the Non-Federal Sponsors shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsors must offer the private owner the option of having the Non-Federal Sponsors appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the incidental costs the Non-

Federal Sponsors incurred in acquiring from private owners any real property interests required pursuant to Article III for the NED/NER Plan, that are documented to the satisfaction of the Government. Only incidental costs incurred after the effective date of this Agreement are eligible for credit, unless such incidental costs were required for in-kind contributions covered by an In-Kind MOU. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

e. Section 4027 Lands. The amount of credit for the Section 4027 lands is currently estimated at \$8,797,539 with \$8,651,020 allocated to the NED/NER Plan for ecosystem restoration and \$146,519 allocated to the NED/NER Plan for flood risk management. Not later than 90 calendar days after the effective date of this Agreement, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to finalize the amount of such credit.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of placement area improvements required for the NED/NER Plan. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurred to provide any placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for credit, unless such placement area improvements were required for in-kind contributions covered by an In-Kind MOU. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of any relocations performed by the Non-Federal Sponsors that are directly related to construction, operation, and maintenance of the NED/NER Plan. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind MOU.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance

with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of in-kind contributions allocated to the NED/NER Plan that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind MOU between the Government and Non-Federal Sponsors; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement 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 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project; for real property interests (other than those acquired through relocations) that are owned or controlled by public entities; for real property interests and relocations required for the ecosystem restoration features that exceed 35 percent of NED/NER Plan costs allocated to initial and remaining construction of such features; or for any

amount that exceeds the value of real property interests, relocations, placement area improvements, or in-kind contributions allocated by the Government to the NED/NER Plan.

## ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total construction costs for the Project are projected to be \$193,700,067 with NED/NER Plan costs projected to be \$119,940,038 and the LPP incremental costs projected to be \$73,760,029. The total NED/NER Plan costs for flood risk management are projected to be \$83,618,671, with the Government's share of such costs projected to be \$53,365,572 and the Non-Federal Sponsors' share of such costs projected to be \$30,253,099, which includes the 5 percent contribution of funds projected to be \$0, creditable real property interests (including the Section 4027 lands), relocations, and placement area improvements projected to be \$146,519, creditable in-kind contributions projected to be \$1,214,616, and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$27,374,173. The total LPP incremental costs for flood risk management are projected to be \$17,543,147. The total NED/NER Plan costs for ecosystem restoration are projected to be \$28,912,248, with the Government's share of such costs projected to be \$16,159,197 and the Non-Federal Sponsors' share of such costs projected to be \$12,702,965, which includes creditable real property interests (including the Section 4027 lands) and relocations projected to be \$8,651,020, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet the 35 percent cost share projected to be \$50,086. The total LPP incremental costs for ecosystem restoration are projected to be \$56,216,882. Construction costs for recreation are projected to be \$7,409,119, with the Government's share of such costs projected to be \$3,704,560 and the Non-Federal Sponsors' share of such costs projected to be \$3,704,560. The total NED/NER Plan costs for remaining construction are projected to be \$4,000,000 with the Government's share of such costs projected to be \$3,637,673 and the Non-Federal Sponsors' share of such costs projected to be \$362,367, which includes creditable real property interests (including the Section 4027 lands) and relocations projected to be \$0, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet the 35 percent cost share projected to be \$362,367. The total NED/NER Plan costs for monitoring and adaptive management are projected to be \$5,205,842, with the Government's share of such costs projected to be \$4,734,287 and the Non-Federal Sponsors' share of such costs projected to be \$471,555, which includes creditable in-kind contributions projected to be \$0, and the amount of funds required to meet the 35 percent cost share projected to be \$471,555. Costs for betterments are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. Deferred Payment of Cash Contributions for Initial Construction of the NED/NER Plan. To the extent BBA 2018 funds are available for initial construction of the Project, the following provisions apply:

1. During initial construction of the Project, the Government will maintain records of monthly Federal obligations allocated to the NED/NER Plan by project purpose and determine non-Federal share of such obligations. Any additional non-Federal cash contributions

by project purpose required for preconstruction engineering and design conducted pursuant to the Design Agreement executed on July 11, 2016 to meet the non-Federal cost share of construction costs shall be included in the first monthly amount.

a. The Government shall charge interest on the non-Federal share of each monthly amount. Interest shall be compounded annually on the anniversary of each monthly amount until the date construction is completed or terminated, as applicable. If such anniversary is less than twelve months, the Government will prorate the interest charges.

b. The Government shall provide the Non-Federal Sponsors with monthly reports of all such monthly amounts incurred to date and the estimated interest charges applied to each monthly amount through that quarter.

c. If the Non-Federal Sponsors elect to make a payment of funds during construction of the Project or the Government determines at any time that it does not have sufficient funds to allow the Non-Federal Sponsors to defer their cash contributions for the NED/NER Plan pursuant to the provisions of paragraph B. of this Article, the Non-Federal Sponsors shall provide such funds by delivering a check payable to “FAO, USAED, San Francisco (L3)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

2. Pursuant to Article II.E. or Article VII, the District Commander shall provide written notification to the Non-Federal Sponsors of the date initial construction was completed or terminated, as applicable. After such notification, the Government shall conduct a final accounting to determine the NED/NER Plan costs and each party’s required share thereof, and each party’s total contributions thereto. Such final accounting does not limit the Non-Federal Sponsors’ responsibility to pay their share of construction costs, including contract claims or any other liability that may become known after the final accounting. In addition, if the final accounting determines that the Non-Federal Sponsors’ credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed their share of NED/NER Plan costs, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsors.

3. Not later than 30 calendar days after the date of the District Commander’s written notice pursuant to paragraph B.2. of this Article, the Government shall complete the final accounting and notify the Non-Federal Sponsors in writing of the principal amount, which includes that portion of the non-Federal cash contributions that have been deferred plus interest during construction, and the initial annual installments of the principal amount amortized over a period of 30-years using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The payment period begins on the date the Government notifies the Non-Federal Sponsors of the principal amount and the initial annual installments.

4. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of the principal amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The Government shall notify the Non-

Federal Sponsors in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

5. The Non-Federal Sponsors shall pay the first installment no later than 30 calendar days after the date of the Government's notification pursuant to paragraph B.3. of this Article, and each annual installment thereafter on the anniversary date of such notification, by delivering a check payable to "FAO, USAED, San Francisco (L3)" to the District Commander or providing an Electronic Funds Transfer in accordance with procedures established by the Government. The Non-Federal Sponsors, in their sole discretion, may prepay the principal amount, in whole or in part, at any time without penalty.

C. Payment of Funds for Remaining Construction and Cost Shared Monitoring and Adaptive Management for the NED/NER Plan.

1. During the period after initial construction is completed through cost shared monitoring and adaptive management, the Government shall provide the Non-Federal Sponsors with quarterly reports setting forth the estimated costs for remaining construction and cost shared monitoring and adaptive management and the Government's and Non-Federal Sponsors' share of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsors funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of creditable real property interests, relocations, and in-kind contributions, and the estimate amount of funds required from the Non-Federal Sponsors for upcoming fiscal year.

2. The Non-Federal Sponsors shall provide the funds required to meet its share of costs for remaining construction and cost shared monitoring and adaptive management by delivering a check payable to "FAO, USAED, San Francisco (L3)" to the District Commander, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of costs for remaining construction and cost shared monitoring and adaptive management as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' required share of such costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds 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.

4. The Government shall conduct another final accounting after completion of cost shared monitoring and adaptive management and furnish the Non-Federal Sponsors with the results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 90 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsors' responsibility to pay their share of the costs for remaining construction and cost shared monitoring and adaptive management, including contract claims or any other liability that may

become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsors exceed the amount of funds required to meet their share of costs for remaining construction and cost shared monitoring and adaptive management for the NED/NER Plan, the Government shall refund such excess amount, subject to the availability of funds for the refund. In addition, if the final accounting determines that the Non-Federal Sponsors' credit for real property interests and relocations combined with credit for in-kind contributions exceed their share of costs for remaining construction for the NED/NER Plan, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsors.

D. If there are real property interests, placement area improvements, relocations, additional work, or betterments provided on behalf of the Non-Federal Sponsors, or LPP incremental costs, the Government shall provide written notice to the Non-Federal Sponsors of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, San Francisco (L3)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

## ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available in BBA 2018 for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsors in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsors to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsors pursuant to this Agreement 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 VIII - HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE IX - 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 the 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 X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsors shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this

Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

#### ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors both act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. No party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsors:

Chief Executive Officer  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

Executive Officer  
California State Coastal Conservancy  
1515 Clay Street, Suite 1000  
Oakland, CA 94612

If to the Government:

District Commander  
San Francisco District  
450 Golden Gate Avenue  
San Francisco, CA 94102

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

#### ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - 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 a party to this Agreement.

ARTICLE XV - JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from either of the entities designated herein as one of the Non-Federal Sponsors.

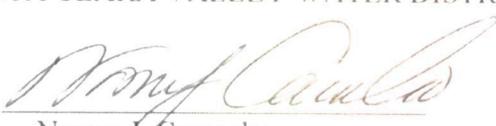
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

BY:   
Travis J. Rayfield  
Lieutenant Colonel, U.S. Army  
District Commander and Engineer

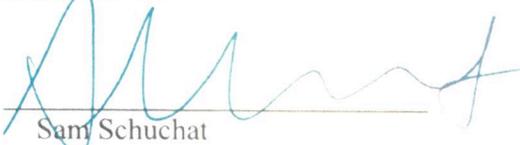
DATE: 2/14/2019

SANTA CLARA VALLEY WATER DISTRICT

BY:   
Norma J. Comacho  
Chief Executive Officer

DATE: 02/13/19

CALIFORNIA STATE COASTAL CONSERVANCY

BY:   
Sam Schuchat  
Executive Officer

DATE: 2/13/19

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

I, Darin Taylor, do hereby certify that I am the Chief Financial Officer of the SANTA CLARA VALLEY WATER DISTRICT (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the SOUTH SAN FRANCISCO BAY SHORELINE PROJECT for EIA 11; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the PROJECT PARTNERSHIP AGREEMENT.

IN WITNESS WHEREOF, I have made and executed this certification this 4<sup>th</sup> day of February, 20 19.

BY: 

TITLE: CHIEF FINANCIAL OFFICER

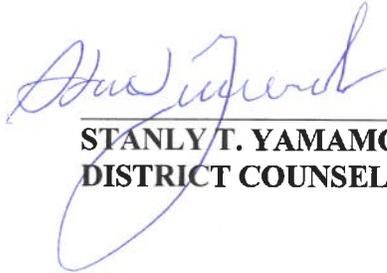
DATE: 2/4/19

CERTIFICATE OF AUTHORITY

I, Stanly T. Yamamoto, do hereby certify that I am the principal legal officer for the **SANTA CLARA VALLEY WATER DISTRICT**, that the **SANTA CLARA VALLEY WATER DISTRICT** is a legally constituted public body with full authority and legal capability to perform the terms of the **Project Partnership Agreement** between the Department of the Army and the **SANTA CLARA VALLEY WATER DISTRICT** in connection with the **SOUTH SAN FRANCISCO BAY SHORELINE PROJECT for EIA 11**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this **Project Partnership Agreement**, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this **Project Partnership Agreement** on behalf of the **SANTA CLARA VALLEY WATER DISTRICT** acted within his statutory authority.

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

5<sup>th</sup> day of February 2019.



\_\_\_\_\_  
**STANLY T. YAMAMOTO**  
**DISTRICT 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.



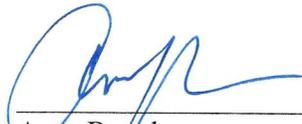
**NORMA J. CAMACHO**  
**CHIEF EXECUTIVE OFFICER**

DATE: 2/6/19

## CERTIFICATE OF AUTHORITY

I, Amy Roach, do hereby certify that I am the principal legal officer for the State Coastal Conservancy, that the State Coastal Conservancy 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 Coastal Conservancy in connection with the Project Partnership Agreement between the Department of the Army and Santa Clara Valley Water District and State Coastal Conservancy for the construction of the South San Francisco Bay Shoreline, Santa Clara County, California, 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 Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the State Coastal Conservancy acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
4<sup>th</sup> day of February 2019.

  
\_\_\_\_\_  
Amy Roach  
Chief Legal Counsel

## CERTIFICATION REGARDING LOBBYING

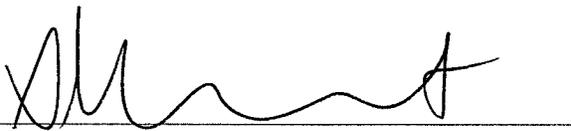
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



**Samuel Schuchat**  
**Executive Officer**

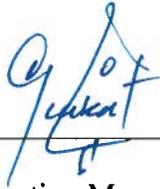
DATE: 2/1/19

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

I, Riakat Ali, do hereby certify that I am the Accounting Manager of the State Coastal Conservancy (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the South San Francisco Bay Shoreline, Santa Clara County, California; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement between the Department of the Army and Santa Clara Valley Water District and State Coastal Conservancy for the South San Francisco Bay Shoreline, Santa Clara County, California.

IN WITNESS WHEREOF, I have made and executed this certification this 31st day of January 2019.

BY: \_\_\_\_\_



TITLE: Accounting Manager

DATE: January 31, 2019