

**STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES AND THE  
[Grantee Name]  
UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM**

**THIS AGREEMENT**, made in quintuplicate and, commencing this [#th day of Month of Year], is entered into by and between the Department of Water Resources of the State of California (hereinafter called the State), and the [name of Grantee, (hereinafter called the Grantee)].

The State and the Grantee agree as follows:

**SECTION 1 PURPOSE OF AGREEMENT**

This Agreement is made by and between the State to the Grantee to assist in financing a Flood Protection Project pursuant to the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act, (California Water Code Section 79035 et seq. Division 26, Chapter 5, Article 2.5), and Public Resources Code Section 75001, et seq, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, specifically Public Resources Code Section 75032.5. [Note: The references above pertain to Prop 13 & 84 projects. Proposition 1E funded projects will have different language.]

Grant funds may be used only as provided in this Agreement for such Eligible Project Costs as set forth in the Project description and Budget, copies of which are incorporated herein by this reference and set forth in Exhibit B, Project Location, Exhibit C, Scope of Work and Exhibit D, Budget which describe tasks to be accomplished and costs associated with those tasks under this Agreement.

**SECTION 2 TERM OF AGREEMENT**

This Agreement shall remain in effect for three (3) years from the date of execution. The date of execution shall be the last date of the required signatures of the parties to the Agreement. Certain activities specified in this Agreement have a different term such as maintenance responsibilities of the grantee which continue in perpetuity and require annual reporting for five years after project completion.

**SECTION 3 PROJECT COSTS**

The Total Project Costs (identified in Exhibit D) are estimated to be \$X,XXX,XXX.00.

## **SECTION 4 STATE GRANT**

Pursuant to the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, and subject to the availability of funds, including any mandates from the Department of Finance, the Pooled Money Investment Board, or any other State authority, the State will reimburse the Grantee, in accordance with the terms of this Agreement, an amount equal to the Grantee's eligible expenditures for this project not to exceed \$X,XXX,XXX.00, as the State Share, as identified in Exhibit D, Budget. The State will not make payments of any kind—advances or reimbursements—until funding is made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and Department of Finance.

## **SECTION 5 GRANTEE'S COST SHARE AMOUNT**

The Grantee agrees to fund the difference, if any, between the actual Project Cost and the State Grant (Section 4). The rate of payment of State grant funds expressed as a percentage share of the State Grant cannot exceed the rate of payment of expenses by the grantee expressed as a percentage of the grantee's share of project costs without prior State authorization.

## **SECTION 6 INCORPORATION OF STANDARD TERMS AND GRANTEE COMMITMENTS**

In addition to Exhibits B, C, and D, this agreement by this reference incorporates Exhibit A, Standard Terms and Exhibit E, Planned Maintenance Activities. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations and statements made by the Grantee in the Application, documents, amendments and communications filed in support of its request for financing.

## **SECTION 7 METHOD OF PAYMENT**

The Grantee shall submit invoices on a [quarterly/monthly](#) basis for eligible non-capital costs and on and as-needed basis for capital costs. Except for property acquisition payments, all payments will be made to the Grantee. Payments will be made upon receipt of an original invoice and three copies by the State of California, Department of Water Resources, 3310 El Camino Avenue, Room [XX](#), Sacramento, CA 95821, to the attention of [Project Manager Name](#), Project Manager for the State. Invoices should include SAP contract number and work plan element identification. For real property acquisition payments, funds will be made payable to the title company and deposited directly into escrow.

The Grantee shall meet all conditions for disbursement of money under this Agreement, including the provisions of the Conditions for Disbursement which is located in Exhibit A.

Failure by Grantee to comply may, at the option of the State, result in termination of the Agreement.

## **SECTION 8 PROGRESS REPORTS AND STATEMENT OF COSTS**

The Grantee shall submit **monthly/quarterly** progress reports, starting with the end of the first complete calendar quarter after date of execution, describing the status of the Project and containing a Statement of Costs to the State. The submittal and approval by the State of these reports is a requirement for continued disbursement of State Grant funds. Progress reports shall summarize the work completed during the reporting period, include a statement of progress toward completion compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget. Additionally, if the grantee is aware of any anticipated problems, obstacles, or issues that could affect the project budget, schedule, or scope of work, they should be discussed in the progress reports.

## **SECTION 9 FINAL REPORTS**

Upon project completion or termination, the Grantee shall submit a Final Report describing project activities and a report of expenditures (Final Financial Report) for the State's review and comment. The Final Report and Final Financial Report shall both be submitted within sixty (60) days of the project completion or termination. The Final Report shall describe the results of the project's activities, and include photographs of pre-project conditions and of the work completed. The Grantee shall also submit a Post-Completion Annual Report of Maintenance Activities annually for five years following completion of the project, with the first report due 12 months after the project completion date.

For any construction activity undertaken pursuant to and funded by this agreement, upon completion of the project the Grantee shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in the paragraph below. The Grantee shall keep on file, for the useful life of the project, as built plans and specifications for the project. Such documents shall be made available for inspection by the State upon reasonable notice.

The Final Financial Report documenting total project expenditures shall be submitted by the Grantee at the same time as the Final Report.

## **SECTION 10 RELATIONSHIPS OF PARTIES**

The Grantee, its contractors, subcontractors, and their respective agents and employees required for performing any work under this Agreement shall act in an independent capacity and not as officers, employees, or agents of the State. Grantee is solely responsible for planning, design, construction, maintenance, and operation of the activity undertaken pursuant to and funded by this agreement. Any review or approval

by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Grantee's responsibility for its work.

## **SECTION 11 PERMITS, LICENSES, APPROVALS AND LEGAL OBLIGATIONS**

The Grantee shall be responsible for obtaining any and all permits, licenses and approvals required for performing any work under this Agreement, including those necessary for planning and implementing the Project. The Grantee shall be responsible for complying with all applicable federal, State and local laws, rules or regulations affecting any such work, specifically including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations and ordinances.

Without limiting the foregoing, Grantee shall keep informed of and take all measures necessary to ensure compliance with the California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this funding agreement.

Work that is subject to the California Environmental Quality Act (CEQA) and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the State Project Manager. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Once CEQA documentation has been completed, the State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

## **SECTION 12 GRANTEE'S RESPONSIBILITIES FOR WORK**

The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to bid disputes and payment disputes with the Grantee's contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

## **SECTION 13 PROJECT OFFICIALS AND NOTICES**

The Project Manager for the State is (Name XXXX).

The Grantee Project Manager shall be (Name XXXX). The Grantee Project Manager shall be the Grantee's representative for the administration of the Agreement and shall have full authority to act on behalf of the Grantee, including authority to execute all payment requests. All communications given to the Project Manager shall be as binding as if given to the Grantee.

Either party may change its representative upon written notice to the other party. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing to the Project Manager.

Notices required to be given to the State in writing by the Grantee under this Agreement shall be sent to:

Project Manager Name  
State of California  
Department of Water Resources  
Flood Protection Corridor Program  
3310 El Camino Avenue, Room XX  
Sacramento, CA 95821

Notices required to be given to the Grantee in writing by the State under this Agreement shall be sent to:

NAME, Director of XXX XXXX  
County of XXXX  
Address  
City, CA XXXXX

A change of address for delivery or notice may be made by either party by written notice of such change of address to the other party.

Notices may be sent by any of the following means: delivery in person, by certified U.S. Mail, postage prepaid, by "overnight" delivery service or, electronic transmission followed by submittal of a hard copy.

#### **SECTION 14 MAINTENANCE OF PROPERTY OWNED IN FEE**

Within their respective ownership of land rights, the Grantee agrees to use, manage, and maintain the property acquired, developed, rehabilitated, or restored with the grant funds provided in this Agreement consistent with the purposes of the program and is required to continue in perpetuity or until deemed no longer necessary by the State. Specific maintenance activities are outlined in Exhibit E, Planned Maintenance Activities. The Grantee or their successors may, with the approval of the State, transfer this responsibility to use, manage, and maintain the property acquired as discussed in Exhibit A, Standard Terms: Easements. Such title transfer will occur in a way that binds the new owner to the same obligations.

#### **SECTION 15 MAINTENANCE ENDOWMENT (Delete this section if no endowment)**

- A. **TITLE OF ENDOWMENT.** There is hereby established within the Grantee an endowment designated the **Name of Endowment** (hereinafter referred to as the “Endowment”) to receive contributions in the form of money and to administer the same.
- B. **PURPOSE.** The purpose of the fund shall be to pay for maintenance of the properties acquired pursuant to this Agreement as specified in the Grantee’s Maintenance Plan, **Exhibit E, Planned Maintenance Activities**.
- C. **FUNDING.** DEPARTMENT OF WATER RESOURCES shall provide **\$XXX,XXX.xx** to the Grantee for deposit in the Endowment at the time of acquisition of the site describe in Exhibit B.
- D. **INVESTMENT OF FUNDS.** The Grantee shall have all powers necessary or in its sole discretion desirable to carry out the purposes of the Endowment, including, but not limited to, the power to commingle the assets of the Endowment with those of other funds for investment purposes.
- E. **COSTS OF THE FUND.** It is understood and agreed that the Endowment shall share a fair portion of the total investment and administrative costs of the Grantee. Those costs annually charged against the Endowment shall be determined in accordance with the then current fee schedule identified by the Grantee as applicable to funds of this type. Those funds shall be invested in accordance with the Grantee’s current investment policy which will comply with the California Uniform Prudent Investor Act.
- F. **NOT A SEPARATE TRUST.** The Endowment shall be a component part of the Grantee. All money and property in the Endowment shall be held as general assets of the Grantee and not segregated as trust property of a separate trust. The use of said funds shall be restricted in accordance with Paragraph B above.
- G. **DISTRIBUTION.** The annual earnings allocable to the Endowment, net of the fees and expenses set forth in Paragraph E above, shall be committed, granted or expended solely for the purposes described in Paragraph B above. If the annual return of the Endowment is not sufficient to fund the committed obligations of the fund, the Grantee may prioritize tasks that can be funded with the available funds and/or supplement the fund with financial resources from other sources.
- H. **ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Grantee shall hold the Endowment, and all contributions to and earnings of the Endowment, subject to the provisions of the California laws and the regulations and approvals that led to the establishment of the Grantee. The Grantee’s board shall monitor the distribution of the Endowment.

## SECTION 16 PROPERTY RIGHTS ACQUISITIONS

The Grantee is coordinating the acquisition of real property rights (Exhibit B attached hereto) for the purpose of the protection, restoration, and enhancement of the flood corridor by combining an effective and low-cost means of flood control protection with the preservation and enhancement of natural environmental values. The acquisition of any real property interest in these properties with State funds must comply with the following:

- A. The Grantee must provide escrow documents and information listed in Exhibit F, [Information Needed for Escrow Processing and Closure](#), including a preliminary title report, vesting documents, and a fully conformed appraisal report to the State. Appraisals must be prepared and signed by a qualified general appraiser, who is licensed by the California Department of Real Estate Appraisers and demonstrates compliance with the Uniform Standards for Professional Appraisal Practices. Any and all appraisal reports shall be submitted to the State for approval prior to disbursement of funds for the acquisition. For low value property interests, the State, in its sole discretion, may waive any of the foregoing submittal requirements.
- B. The property rights shall be acquired from a willing seller as promulgated in Water Code Section 79037 (b) (4), Division 26, Chapter 5, Article 2.5, and in compliance with current laws governing acquisition of properties by public agencies.
- C. The Grantee shall provide sufficient notice to adjacent landowners and other members of the public to enable public input on interests that may be affected by the acquisition and changes in land use.
- D. The Grantee shall use, manage, and maintain the property in a manner consistent with the purpose of the acquisition until the State determines that maintenance is no longer necessary. The Grantee further assumes all management and maintenance costs associated with the acquisition, including the costs of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The State shall not be liable for any cost of such management or maintenance. The Grantee will, prior to the acquisition of the property identified in Exhibit B - Project Location, develop a monitoring and maintenance plan and determine who will be responsible for it and submit it to the State for approval.
- E. The Grantee shall disclose all riparian water rights that it is aware of that would be affected by a real property acquisition and propose appropriate treatment of such rights.
- F. Funds provided by the State for real property acquisitions shall be deposited by the State with an escrow holder acceptable to the State and with escrow

instructions regarding funding and disbursement to be approved by the State. If the escrow does not close by the date set forth in the State's escrow instructions, or such other date as may be agreed to in writing by the parties, the funds provided by the State shall be returned to the State.

- G. The Grantee shall supply a copy of any recorded vesting documents to the State after close of escrow.
- H. Interim financial reports documenting incurred eligible costs shall be submitted by the Grantee within 60 days of completion of the acquisition of real property.

**IN WITNESS HEREOF**, the following authorized representatives have executed this Agreement as of the date first above written and approved as to Legal form and sufficiency.

**GRANTEE**

By: \_\_\_\_\_  
Name, Title

Date: \_\_\_\_\_

**STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_  
Mark W. Cowin, Director

Date: \_\_\_\_\_

Approved as to Legal Form and Sufficiency

By: \_\_\_\_\_  
Cathy Crothers, Acting Chief Counsel

Date: \_\_\_\_\_

Attachments

List of Exhibits:

Exhibit A – Standard Terms

Exhibit B – Project Location

Exhibit C – Scope of Work

Exhibit D – Budget

Exhibit E – Planned Maintenance Activities

Exhibit F – [Information Necessary for Escrow Processing and Closure](#)