

**STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA,
DEPARTMENT OF WATER RESOURCES
AND**

(NAME OF GRANTEE)

FOR

**SMALL COMMUNITIES FLOOD RISK REDUCTION PROGRAM
FEASIBILITY STUDY**

A PART OF THE SMALL COMMUNITIES FLOOD RISK REDUCTION PROGRAM

UNDER

**THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION
BOND ACT OF 2006, PUBLIC RESOURCES CODE SECTION 5096.800, ET SEQ.**

September 20, 2016

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FUNDING AGREEMENT BETWEEN THE DEPARTMENT OF WATER RESOURCES

AND

(NAME OF APPLICANT)

**UNDER THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND
ACT OF 2006**

(Public Resources Code § 5096.800 et seq.)

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources (DWR) and the (Name of Grantee), a public agency, in the State of California (State), duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee," which parties do hereby agree as follows:

1. PURPOSE:

DWR shall provide funding from the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E; Pub. Resources Code § 5096.800, et seq.) to the Grantee to assist in financing the Feasibility Study as defined in the attached Scope of Work, Exhibit A (Project) pursuant to the Small Communities Flood Risk Reduction (SCFRR) Program. Nothing herein shall preclude the Grantee from proceeding, self-funded, with work that has not been deemed eligible by DWR.

2. TERM OF THE AGREEMENT:

The term of this Agreement shall be from the date this Agreement is executed by DWR through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by (date) and no funds may be requested after (date).

3. FUNDING AMOUNT:

The maximum amount payable by DWR under this Agreement shall not exceed \$xxx,xxx. The Grantee agrees to fund any additional costs necessary to complete the Project. Such additional costs are the sole responsibility of the Grantee.

4. ELIGIBLE COSTS:

The Grantee shall seek reimbursement only for Eligible Costs in accordance with applicable provisions of the law and as described in Exhibit B of this Agreement. Eligible costs are the reasonable and necessary actual costs associated with the Project incurred upon execution of this Agreement. The execution date of this Agreement is the date of the final signature by the State. Further information as to what costs are eligible and ineligible may be found in the SCFRR Program Guidelines which are incorporated herein by reference.

5. PROGRAM AND PROJECT MANAGERS:

Either party may change its Project Manager upon written notice to the other party. DWR's Project Manager shall be Robert Crane, SCFRR Program Manager. Except as set forth in Paragraph 16, DWR's Project Manager shall be DWR's representative and

shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under the Agreement.

The Grantee's Project Manager shall be **(Insert name and title of Grantee representative)**. The Grantee's 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.

DWR's Program Manager shall be the DWR Division of Flood Management Chief. DWR's Program Manager shall execute the Agreement and any amendments thereto.

6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The Project is exempt from CEQA compliance pursuant to California Code of Regulations, title 14, section 15262. A feasibility study is a document involving planning for possible future actions. The Grantee shall file a Notice of Exemption (NOE) with its County Clerk, or with the State Office of Planning and Research pursuant to California Code of Regulations, title 14, section 15062. The Grantee acknowledges that the filing of the NOE is a condition precedent to the disbursement of any grant funds pursuant to this Agreement.

7. GRANTEE'S RESPONSIBILITIES:

The Grantee or its authorized representatives shall be responsible for work and for persons or entities engaged in work, including, but not limited to, contractors, partners, subcontractors, suppliers, and providers of services. 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, payment disputes with the Grantee's partners, contractors and subcontractors. DWR will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work. The Grantee or its representatives shall fulfill the Grantee's obligations under the Agreement and shall be responsible for the quality of the Project. The Grantee shall faithfully and expeditiously perform or cause to be performed all work as described in Exhibit A, Scope of Work and in accordance with Exhibit B, Project Costs and Budget.

8. RELATIONSHIP OF PARTIES:

The Grantee is acting in its independent capacity and is solely responsible for the Project as set forth in the Scope of Work in Exhibit A. Review or approval of the Project or other planning documents by DWR is solely for the purpose of proper administration grant funds by DWR and shall not be deemed to relieve or restrict responsibilities of the Grantee under this Agreement.

9. GRANTEE REPRESENTATIONS:

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 Grantee in the application, accompanying documents, amendments, and communications filed in support of its request for funding. The Grantee shall comply with and require its contractors, subcontractors, and providers of services to comply with all applicable state laws and regulations.

10. REQUIREMENTS FOR DISBURSEMENT:

The Grantee shall meet all conditions precedent to the disbursement of money under this Agreement, including filing an NOE pursuant to Paragraph 6, and Basic Conditions, Paragraph 11. Failure by the Grantee to comply may, at the option of DWR, result in termination of the Agreement. DWR shall have no obligation to reimburse funds under this Agreement unless and until the disbursement is in accordance with requirements of Proposition 1E. For disbursements of funds for the Project, the Grantee shall continue to meet the Basic Conditions stated in Paragraph 11.

11. BASIC CONDITIONS:

DWR shall have no obligation to disburse funds for the Project under this Agreement unless and until the Grantee has satisfied DWR's requirements for disbursement, which include:

- a. The Grantee demonstrates compliance with the provisions of the Agreement.
- b. As required by this Agreement, the Grantee submits timely periodic progress reports as required by Paragraph 17.

12. STATEMENT OF COSTS:

The Grantee shall provide DWR with a Statement of Costs.

- a. The Grantee shall provide a statement of the incurred Eligible Costs for work performed during the period identified in the particular statement. The Statement of Costs shall include:
 - i. The date of the invoice, the time period covered by the invoice, and the total amount due;
 - ii. Itemized costs based on the categories specified in Exhibit B, Project Costs and Budget. The amount claimed for salaries/wages/consultant fees must be based on a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed);
 - iii. Delineation between costs claimed for reimbursement from DWR's funding amount and the Grantee's costs as set forth in Paragraph 3;
 - iv. Original signature and date (in ink) of the Grantee's authorized representative or Project Manager.
- b. DWR will provide payment for those Eligible Costs that were incurred after the DWR's execution of this Agreement.
- c. DWR will review each Monthly Progress Report and each Statement of Costs to determine whether claimed costs are Eligible Project Costs and whether the Grantee has provided adequate information to verify that claimed expenses were incurred.
- d. DWR may reject a Statement of Costs if: (1) it is submitted without signature; or (2) it is submitted under signature of a person other than the Grantee's Project Manager or the Grantee's authorized representative.

- e. A Statement of Costs containing a mathematical error will be corrected by DWR, after a telephone call or email to the Grantee; and will thereafter be treated as if submitted in the corrected amount. DWR will provide the Grantee with notification of the corrected Statement of Costs.
- f. DWR will notify the Grantee by mail, whenever, upon review of a Statement of Costs, DWR determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this Agreement; (2) do not constitute Eligible Project Costs approved by DWR for funding under the terms of this Agreement; or (3) are not supported by invoices or receipts acceptable to DWR. The Grantee may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to DWR to cure such deficiency(ies). If the Grantee fails to timely submit adequate documentation curing the deficiency(ies), DWR will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). The Grantee may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. Disputes concerning whether costs are Eligible Projects Costs and have been adequately documented will be resolved in accordance with the dispute resolution process set forth in Paragraph 16.
- g. All Statements of Costs shall be accompanied by a statement signed by the Grantee's Project Manager or authorized representative that the statement is correct to the best of his or her knowledge and belief after an investigation that is reasonable under the circumstances and is submitted under penalty of perjury.
- h. At the sole discretion of the DWR, DWR may modify the requirements for preparation and submittal of Statements of Costs in order to improve administration of this Agreement or to ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.

13. METHOD OF PAYMENT FOR ELIGIBLE PROJECT COSTS:

After the disbursement requirements in Paragraph 10 are met, the Grantee shall provide to DWR a Statement of Costs in accordance with Paragraph 12 and timely progress reports in accordance with Paragraph 17. Following receipt of the Statement of Costs and timely progress reports, the State will disburse the whole or portions of the funding commitment to the Grantee.

Payment will be made monthly, in arrears, upon receipt of an invoice bearing the Grantee's Name. Submit the original and three (3) copies of the invoice form to the following address:

Department of Water Resources
Division of Flood Management
Attention: Robert Crane
3464 El Camino Ave, Suite 200
Sacramento, CA. 95821-9000

14. DISBURSEMENT:

Following the review of each Statement of Cost, DWR will disburse to the Grantee the amount approved, subject to the availability of funds through normal State processes and pursuant to Paragraphs 7 and 10. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. All money disbursed pursuant to this Agreement shall be used solely to pay Eligible Project Costs and deposited, administered, and accounted for pursuant to the provisions of applicable law. Funds will be disbursed by the State in response to each approved invoice, and in accordance with the Project Costs and Budget, Exhibit B. Any and all money disbursed to the Grantee under this Agreement, and any and all interest earned by the Grantee on such money shall be used solely to pay Eligible Costs.

15. WITHHOLDING OF FUNDING DISBURSEMENT BY STATE:

If DWR determines the Scope of Work is not being implemented in accordance with the provisions of this Agreement, or that the Grantee has failed in any other respect to comply with the provisions of this Agreement, and if the Grantee does not remedy any such failure to DWR's satisfaction, DWR may withhold from the Grantee all or any portion of the grant funds and take any other action that it deems necessary to protect the State's interests. DWR may require the Grantee to immediately repay all or any portion of the disbursed funding amount with interest, consistent with its determination. DWR may consider the Grantee's refusal to repay the requested funding amount a contract breach subject to the default provisions in Paragraph 16. If DWR notifies the Grantee of its decision to withhold the entire funding amount from the Grantee pursuant to this paragraph, this Agreement shall terminate upon receipt of such notice by the Grantee and shall no longer be binding on either party.

16. DEFAULT PROVISIONS AND DISPUTE RESOLUTION:

The Grantee will be in default under this Agreement if any of the following occur:

- a. Breach of this Agreement, or any supplement or amendment to it, or any other agreement between the Grantee and the State evidencing or securing the Grantee's obligations;
- b. Making any false warranty, representation, or statement with respect to this Agreement;
- c. Failure to complete the Project in accordance with this Agreement; or,
- d. Failure to make any remittance required by this Agreement.

Should an event of default occur, DWR shall provide a notice of default to the Grantee. If the Grantee fails to cure the default within a reasonable period of time (not less than 10 days) prescribed by DWR, DWR may do any or all of the following:

- a. Require repayment of any grant funds disbursed, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default;
- b. Terminate any obligation to make future payments to the Grantee;
- c. Terminate this Agreement; and,

d. Take any other action that it deems necessary to protect its interests.

Any claim the Grantee may have regarding the performance of this Agreement including, but not limited to claims for an extension of time, shall be submitted to the Program Manager within thirty (30) calendar days of the Grantee's knowledge of the claim. DWR and the Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Agreement to implement the terms of any such resolution.

Before either party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties. Any costs of dispute resolution shall be shared evenly by the parties. Except as specifically provided in this Agreement, the existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

In the event of litigation between the parties arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees, and that any such action shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.

17. SUBMISSION OF PROGRESS REPORTS:

The submittal and approval of all progress reports is a requirement for the successful completion of this Agreement. Progress reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to DWR. All progress reports shall be submitted along with the invoices to the address in Paragraph 13, and shall be submitted in both electronic and hard copy forms. If requested, the Grantee shall promptly provide any additional information deemed necessary by DWR for approval of progress reports. Progress reports shall be presented in the formats described in Exhibit D. The submittal and approval of progress reports is a requirement for processing each Statement of Costs. Submittal of a Project Completion Report is a requirement for the release of any funds retained for the Project.

- a. Monthly Reports: Beginning the month that the Agreement is executed by DWR, and for the duration of the Agreement, the Grantee shall submit to DWR a monthly report which explains the status of the Project described in the Scope of Work, Exhibit A. Reports shall be submitted by the last day of the month. Progress reports shall summarize the work as explained in Exhibit D.
- b. Project Completion Report: Upon completion of the tasks for the Project included in Exhibit A, Scope of Work, the Grantee shall prepare and submit to DWR a Project Completion Report. The Grantee shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks in the Scope of Work. The Project Completion Report shall summarize the work as explained in Exhibit D.
- c. Compliance with Executive Order S-02-07: At the sole discretion of DWR, DWR may modify the requirements for preparation and submittal of work plans and reports called for in this Agreement in order to improve administration of the State-Federal

Flood Control System Modification Program or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.

18. PERFORMANCE EVALUATION:

The Grantee's performance under this Agreement will be evaluated by DWR after completion.

19. NOTIFICATION OF STATE:

The Grantee shall promptly notify, in writing, State of the following items:

- a. Events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to DWR and DWR has given written approval for such change.
- b. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by DWR or the State's representatives. The Grantee shall make such notification at least fourteen (14) calendar days prior to the event.
- c. Completion of work on the Project.

20. NOTICES:

Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Agreement shall be in writing. Notices may be sent by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, return receipt requested, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by facsimile transmission, followed submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given seven (7) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent by facsimile will be effective on the date of successful transmission, which is documented in writing. Notices shall be sent to the following addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below:

Department of Water Resources
Division of Flood Management
Attention: Robert Crane
3464 El Camino Ave, Suite 200
Sacramento, CA. 95821-9000

(Grantee's Contact Name and Address)

21. MODIFICATION OF OVERALL WORK PLAN:

At the request of the Grantee, DWR, may, at its sole discretion, approve non-material changes to the Scope of Work which concern the budget and schedule without formally amending this Agreement. Non-material changes with respect to the budget are

changes that only result in reallocation of the line items within the budget and will not result in an increase in the amount of the DWR Funding Commitment set forth in Paragraph 3. Non-material changes with respect to the Project schedule are changes that will not extend the Term of this Agreement which is set forth in Paragraph 2. Requests for non-material changes to the budget and schedule must be submitted by the Grantee to DWR in writing and are not effective unless and until specifically approved by the DWR Project Manager in writing.

If the Grantee and DWR agree to a material change with respect to the Overall Work Plan that decreases the Eligible Costs in Paragraph 4, the parties agree there shall be proportionate reduction in the limit on state funds set forth in Paragraph 3.

DWR may, without requiring an amendment to this Agreement, increase DWR's Funding Commitment set forth in Paragraph 3, if changes in the Scope of Work, agreed to by the parties, require such increase. A request for an increase in DWR's Funding Commitment is not effective unless and until specifically approved by DWR's Project Manager in writing.

22. INCORPORATION OF STANDARD CONDITIONS AND GRANTEE COMMITMENTS:
The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A – Scope of Work
- Exhibit B – Project Costs and Budget
- Exhibit C – Standard Conditions
- Exhibit D – Progress Report Format and Requirements
- Exhibit E – Guidelines for Grantees under DWR Funding Programs
Documents Required for State Audits
- Exhibit F – Local Agency Resolution

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

(NAME OF Grantee)

Eric Koch, P.E., Acting Chief
Division of Flood Management

(name and title)

Date _____

Date _____

Approved as to Legal Form and Sufficiency

Approved as to Legal Form and Sufficiency
for (Name of Grantee)

Robin Brewer, Assistant Chief Counsel
Office of the Chief Counsel

(name and title) Grantee Counsel

Date _____

Date _____

EXHIBIT A – SCOPE OF WORK

DRAFT

EXHIBIT B – PROJECT COSTS AND BUDGET

DRAFT

EXHIBIT C – STANDARD CONDITIONS

C.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a. **Separate Accounting of Funding Disbursements and Interest Records:** The Grantee shall account for the money disbursed pursuant to this Agreement separately from all other Grantee funds. The Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. The Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times.
- b. **Fiscal Management Systems and Accounting Standards:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state or federal law, or this Agreement.
- c. **Disposition of Money Disbursed:** All money disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- d. **Remittance of Unexpended Funds:** The Grantee shall remit to the State any unexpended funds that were disbursed to the Grantee under this Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from the State to the Grantee of funds or, within thirty (30) calendar days of the expiration of the Agreement, whichever comes first.

C.2. ACKNOWLEDGEMENT OF CREDIT: The Grantee shall include appropriate acknowledgement of credit to DWR and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Agreement.

C.3. AMENDMENT: This Agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request. DWR shall have no obligation to agree to an amendment.

C.4. AMERICANS WITH DISABILITIES ACT: By signing this Agreement, the Grantee assures DWR that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

C.5. APPROVAL: This Agreement is of no force or effect until signed by all parties to the Agreement. The Grantee may not submit invoices or receive payment until all required signatures have been obtained.

C.6. ASSIGNMENT: This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State.

- C.7. AUDITS: The State reserves the right to conduct an audit during the Term of the Agreement as set forth in Paragraph 2, with the costs of such audit borne by the State. After completion of the Project, State may require the Grantee to conduct a final audit to State's specifications, at the Grantee's expense, such audit to be conducted by and a report prepared by an independent certified public accountant. Failure or refusal by the Grantee to comply with this provision shall be considered a breach of this Agreement, and DWR may elect to pursue any remedies provided in Paragraph 16 or take any other action it deems necessary to protect its interests.
- Pursuant to Government Code section 8546.7, the Grantee shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Agreement with respect of all matters connected with this Agreement, including but not limited to, the cost of administering this Agreement. All records of Grantee or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after final payment.
- C.8. BUDGET CONTINGENCY: If the Budget Act of the current year and/or subsequent years covered under this Agreement does not appropriate sufficient funds for this program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Agreement and the Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide Grantee with a right of priority for payment over any other grantee. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.
- C.9. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code section 7110, that:
- a. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and,
 - b. The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- C.10. COMPETITIVE BIDDING AND PROCUREMENTS: The Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in the Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by the State under this Agreement.
- C.11. COMPUTER SOFTWARE: The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this

Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

- C.12. CONFLICT OF INTEREST: All participants are subject to State and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in this Agreement being declared void; other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- a. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b. Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c. Employees of the Grantee: Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Government Code section 87100 et seq.
 - d. Employees and Consultants to the Grantee: Individuals working on behalf of a Grantee may be required by DWR to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- C.13. DELIVERY OF INFORMATION, REPORTS, AND DATA: The Grantee agrees to expeditiously provide throughout the term of this Agreement, such reports, data, information, and certifications as may be reasonably required by DWR.
- C.14. DISPOSITION OF EQUIPMENT: The Grantee shall provide to DWR, not less than thirty (30) calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by DWR. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within sixty (60) calendar days of receipt of such inventory DWR shall provide the Grantee with a list of the items on the inventory to which the State will take title. All other items shall become the property of the Grantee. The State shall arrange for delivery from the Grantee of items to which it takes title. The cost of transportation, if any, shall be borne by the State.
- C.15. DRUG-FREE WORKPLACE CERTIFICATION – CERTIFICATION OF COMPLIANCE: By signing this Agreement, the Grantee, its contractors or subcontractors hereby certify,

under penalty of perjury under the laws of the State, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
- b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The Grantee's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation, and employee assistance programs; and,
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c. Provide, as required by Government Code section 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:
 - i. Will receive a copy of the Grantee's drug-free policy statement, and
 - ii. Will agree to abide by terms of the Grantee's condition of employment, contract or subcontract.

C.16. GOVERNING LAW: This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

C.17. GRANTEE'S RESPONSIBILITY FOR WORK AND PERFORMANCE: The Grantee is solely responsible for the design, implementation, and operation and maintenance of the Project. Review or approval of plans, specifications, Project documentation, bid documents, or other documents by the State is solely for the purpose of proper administration of grant funds and shall not be deemed to relieve or restrict the Grantee's responsibility.

The Grantee shall be responsible for all work and for all persons or entities engaged in the work, including contractors, subcontractors, suppliers, and providers of services. The Grantee shall give personal supervision to any work in progress that is required under this Grant Agreement or employ a competent representative, satisfactory to the State, with the authority to act for the Grantee. The Grantee or its authorized representative shall be present while work is in progress. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including 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 or payment for work. The Grantee agrees to faithfully and expeditiously perform or cause to be performed all requirements of this Agreement and any amendments hereto.

- C.18. INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
- C.19. INDEMNIFICATION: The Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to, any claims or damages arising from the planning, design, construction, maintenance and/or operation of this Project and any breach of this Agreement. The Grantee shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
- C.20. INDEPENDENT CAPACITY: The Grantee, and the agents and employees of the Grantee, in the performance of the Agreement, shall act in an independent capacity and not as officers, employees, or agents of DWR or the State.
- C.21. INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by the Grantee to comply with this provision shall be considered a breach of this Agreement, and DWR may withhold disbursements to the Grantee or take any other action it deems necessary to protect its interests.
- C.22. INSPECTIONS OF PROJECT BY STATE: The State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts, and the Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to this Agreement.
- C.23. INVOICE DISPUTES: In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided in Paragraph 13, may result in return of the invoice to the Grantee. Payment by the State to the Grantee shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that the Grantee may have regarding the performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Manager within thirty (30) calendar days of the Grantee's knowledge of the claim. DWR and the Grantee shall then attempt to negotiate a resolution of such claim and may process an amendment to the Agreement to implement the terms of any such resolution.
- C.24. LABOR CODE COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations

(DIR) requirements may be found at <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Grantee affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

C.25. NON-DISCRIMINATION:

- a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- b. The Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
- e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.

C.26. OPINIONS AND DETERMINATIONS: Where the terms of this Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

C.27. REMAINING BALANCE: In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify the Grantee stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Grant Agreement.

- C.28. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- C.29. RETENTION: Notwithstanding any other provision of this Agreement, DWR shall withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of Eligible Project Costs. DWR shall disburse the retained funds of the Project to the Grantee when the Project is completed and the Project Completion Report (Paragraph 17) is submitted to and approved by DWR.
- C.30. RIGHTS IN DATA: The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Government Code section 6250 et seq. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Agreement, subject to appropriate acknowledgement of credit to DWR and the State for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- C.31. SEVERABILITY: Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and this Agreement shall continue as modified.
- C.32. STATE REVIEWS: The parties agree that review or approval of project application, documents, permits, plans, and specifications or other project information by DWR is for administrative purposes only and does not relieve the Grantee of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project.
- C.33. SUSPENSION OF PAYMENTS: This Agreement may be subject to suspension of payments or termination, or both, and the Grantee may be subject to debarment if the State determines that:
- a. The Grantee, its contractors, or subcontractors have made a false certification, or
 - b. The Grantee, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Agreement.
- C.34. SUCCESSORS AND ASSIGNS: This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by DWR and made subject to such reasonable terms and conditions DWR may impose.
- C.35. TERMINATION BY GRANTEE: Subject to DWR approval which may be reasonably withheld, the Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, the Grantee must provide a reason(s) for termination. The Grantee must submit all progress reports summarizing accomplishments up until termination date.

- C.36. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 16 (Default Provisions), DWR may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 16.
- C.37. TERMINATION WITHOUT CAUSE: DWR may terminate this Agreement without cause on 30 days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- C.38. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- C.39. TIMELINESS: Time is of the essence in this Grant Agreement.
- C.40. TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Agreement. Travel and per diem expenses to be reimbursed under this Agreement shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations and shall be reimbursed consistent with the rates current at the time of travel. These rates are published at: <http://www.calhr.ca.gov/employees/Pages/travel-meals.aspx>, or its successor website. For the purpose of computing such expenses, the Grantee's designated headquarters shall be: (insert Grantee's address). No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the DWR's Project Manager.
- C.41. UNION ORGANIZING: The Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. Furthermore, the Grantee, by signing this Agreement, hereby certifies that:
- a. No State funds disbursed by this Agreement will be used to assist, promote, or deter union organizing.
 - b. The Grantee shall account for State funds disbursed for a specific expenditure by this Agreement to show those funds were allocated to that expenditure.
 - c. The Grantee shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- If the Grantee makes expenditures to assist, promote, or deter union organizing, the Grantee will maintain records sufficient to show that no State funds were used for those expenditures and that the Grantee shall provide those records to the Attorney General upon request.
- C.42. WAIVER OF RIGHTS: None of the provisions of this Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

EXHIBIT D – PROGRESS REPORT FORMAT AND REQUIREMENTS

PROGRESS REPORTS

Monthly Reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on the Project contained in the Scope of Work. The report should reflect the status of the entire Project identified in the Agreement. Describe the work performed during the quarter or month including:

PROJECT INFORMATION

- Status of the Project;
- Major accomplishments during the month (e.g. tasks completed, milestones met, meetings held or attended, press releases, etc.);
- Discuss participation level of other entities in the feasibility study process
- Issues and risks that have, will, or could affect the schedule or budget, with a recommendation on how to mitigate the matter; and,
- Description of the differences between the work performed and the work outlined in the Scope of Work, Exhibit A.

COST INFORMATION

- List costs incurred during the month by the Grantee and each contractor working on the Project. The list should include hours per task worked on during the month for above personnel. This does not include in-kind costs.
- In-kind expenditures for the month.
- A discussion on how the actual budget is progressing in comparison to the Project budget included in Exhibit B; and,
- A revised budget, by task, if changed from latest budget.
- Projected expenditures for the next reporting period.

SCHEDULE INFORMATION

- A schedule showing actual progress (% complete and planned completion date) versus planned progress (baseline) as shown in Exhibit A;
- A discussion on how the actual schedule is progressing in comparison to the schedule in Exhibit A; and,
- A revised schedule, by task, if changed from latest schedule in Exhibit A.

ANTICIPATED ACTIVITIES NEXT REPORTING PERIOD

Provide a description of anticipated activities for the reporting period.

PROJECT COMPLETION REPORT

The Project Completion Report shall generally use the following format. This format may be modified as necessary to effectively communicate information on the Project contained in the Exhibit A, Scope of Work. The report should reflect the status of the entire Project identified in the Agreement.

Executive Summary

Provide a brief summary of the completed Project.

Report Status

- a. Describe work performed.
- b. Describe major accomplishments, such as:
 - i. Tasks completed
 - ii. Milestones met
 - iii. Meetings held or attended
 - iv. Press releases, etc.
 - v. Data delivered or information gained.
- c. Discuss any issues or concerns that affected the schedule or budget.

Cost Information

- a. Complete cost accounting of the Project by Grantee and each subcontractor working on the Project. Include hours per task worked on during the reporting period for above personnel.
- b. Discuss how the final expenditure compares to the Project Budget.

Schedule Information

- a. Provide a final Project schedule showing actual progress versus planned progress from the schedule.

ELECTRONIC REPORT FORMATTING

The Grantee agrees that work funded under this Agreement will be provided in an electronic format to DWR. Electronic submittal of final reports, plans, studies, data, and other work performed under this Agreement shall be as follows:

- Text preferably in MS WORD or text PDF format. The PDF file shall be searchable.
- Files named so that the public can determine their content. For example, file naming of reports must have the title and, if subdivided into smaller sized files, the chapter number/letter and names in the report Table of Content (TOC); files of maps, figures, and tables by number/letter as referenced in the TOC; well logs files with State-required naming convention; and Appendix number/letter and named in the TOC.
- For projects involving a modeling component, the Grantee shall provide the major input data files, parameters, calibration statistics, output files, and other information requested by DWR's Project Manager.
- DWR will retain all ownership of the digital data it has generated and any derivative works using the digital data as its source. The Grantee agrees to immediately notify DWR in writing of any and all defects, errors, inaccuracies or any other problems with the Data discovered during Data usage.
- Electronic copies of all finalized geographic information system (GIS) data files, or non-GIS files containing spatial data (such as in Excel worksheets), in ArcGIS version 10.0, including but not limited to shapefiles (all components), geodatabases, coverages, grids, MXD files, etc. All data, subject to DWR review and approval, shall comply with all aspects of DWR FloodSAFE GIS Standards. Maps developed by the Grantee shall include a logo that will be provided by DWR. Each data file shall include or be attached to metadata in compliance with the current DWR FloodSAFE GIS Standards. Metadata shall include detailed descriptions of: creation methods, analysis steps, spatial and attribute accuracies/completeness, complete data dictionaries, and any other relevant information that could affect interpretation of applicability of these data toward any potential purpose. All data shall be provided in NAD83/NAVD88 reference datums.
- All other physical or electronic components used to create any printed or electronic product, so that State obtains the capability to open and print any document, figure, plate, profile, table or graph included in this task order, and edit them as necessary. These include, but are not limited to: all GIS data files used to produce any map, regardless of the file origin; all finalized GIS document files such as, but not limited to, ESRI ArcMap Document (MXD) files and AutoCAD Drawing Exchange Format (DXF) files; style sheets for all symbology used in any GIS product; any linked or embedded tables, graphics or text that were included in any map layout, all in a form that permits editing; all CADD files, all image files.
- Electronic copies of all source data (including, but not limited to, GIS files) and significant intermediate processing step files used to generate final data files.

EXHIBIT E

GUIDELINES FOR GRANTEES UNDER DWR FUNDING PROGRAMS

DOCUMENTS REQUIRED FOR STATE AUDITS

The list below detail the documents and records that State auditors will need to review in the event that this Agreement is audited. The Grantee should ensure that such records are maintained for the Project and retained for at least three (3) years after receipt of the final payment of grant funds pursuant to this Agreement.

Internal Controls:

1. Organization chart (i.e. Grantee's overall organization chart, and organization chart for this).
2. Written internal procedures and flowcharts for the following:
 - a. Receipts and deposits
 - b. Disbursements
 - c. State reimbursement requests
 - d. Grant fund expenditure tracking
 - e. Guidelines, policy, and procedures on grant Program/Project
3. Audit reports of the Grantee's internal control structure and/or financial statements within the last two years.
4. Prior audit reports on grant, loan, or funding Program/Project.

Grants, Loans or Directed Funding:

1. Original grant agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans or directed funds received from the State.
3. A listing of all other funding sources for the Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners documents, if applicable.
2. Contracts between the Grantee and other agencies as related to the Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to DWR for payments under this Agreement.
2. Documentation linking subcontractor invoices to DWR reimbursement requests for this Agreement.
3. Reimbursement requests submitted to DWR for this Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.

2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under this Agreement.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for loan receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for funding reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs and how those costs directly relate to the Project.

Personnel:

1. List of all contractors and Grantee staff that worked on the Project.
2. Payroll records including timesheets for contractor staff and the Grantee personnel who provided services charged to the program.

Project Files:

1. All supporting documentation maintained in the Project files.
2. All grant funding related correspondence.

EXHIBIT F – LOCAL AGENCY RESOLUTION
(insert Grantee’s resolution from application)

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