FINAL

Small Communities Flood Risk Reduction Program

GUIDELINES

STATE OF CALIFORNIA

DEPARTMENT OF WATER RESOURCES

DIVISION OF FLOOD MANAGEMENT

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TABLE OF CONTENTS

1. PROGRAM DESCRIPTION 3
2. FUNDING AUTHORITY 5
3. COST-SHARING 5
4. ELIGIBLE APPLICANTS 6
5. ELIGIBLE PROJECTS 6
6. PROPOSAL REQUIREMENTS 7
7. ELIGIBLE PROJECT COSTS 7
8. PROPOSAL SELECTION AND FUNDING PROCESS 8
9. REQUIREMENTS WHEN SIGNING A FUNDING AGREEMENT WITH THE STATE 9
   9.1 Conflict of Interest and Confidentiality 9
   9.2 Indemnify and Hold Harmless 10
   9.3 Labor Code Compliance 10
10. GUIDELINE AMENDMENTS 10
Appendix 1 – Local Public Agency Authorizing Resolution 11
Appendix 2 - Attorney's Certification 12

1. PROGRAM DESCRIPTION

The Small Communities Flood Risk Reduction (SCFRR) Program was created as a result of the adoption of the 2012 Central Valley Flood Protection Plan (CVFPP) (http://www.water.ca.gov/cvfmp/2012cvfpp.cfm). The SCFRR Program objective is to reduce flood risks for small communities protected by the State Plan of Flood Control (SPFC) facilities. Small communities are defined as developed areas with between 200 and 10,000 residents, as described in the CVFPP. Legacy communities will also be considered.[1]

The SCFRR Program supports the continued viability of small communities within the SPFC Planning Area to preserve cultural and historical continuity and important social, economic, and public services to rural-agricultural populations, agricultural enterprises, and commercial operations. Under the SSIA, several small communities within the SPFC Planning Area could achieve the FEMA benchmark (for the National Flood Insurance Program) of 100-year (1% annual chance) flood protection through structural means such as ring levees, training levees, or floodwalls; through reconstructing or making improvements to adjacent SPFC levees; or by implementing nonstructural improvements. This would preserve small community development opportunities within specific boundaries without encouraging broader urban development. The Department of Water Resources (DWR) will fund small communities and counties to conduct feasibility studies in Phase 1, and to the extent funding allows, design and implement projects with a DWR-approved feasibility study in Phase 2.

The primary goals of the CVFPP are to reduce the chance of flooding and property damage once flooding occurs, and to improve public safety, community preparedness, and emergency response. Supporting goals of the CVFPP are to improve operations and maintenance, promote ecosystem functions, improve institutional support, and promote multi-benefit projects (CVFPP, pp. 1-26 and 1-27).

Under the SCFRR Program, State investments must be consistent with the SSIA in Section 3.0 of the CVFPP. For a project to be consistent with the SSIA, it must incorporate CVFPP principles and contribute to the applicable integrated water management plan objectives, which target public safety, economic stability, and ecosystem vitality.

Projects should be consistent with applicable regional flood management plans and make significant progress towards improving the level of flood protection. Projects should consider:

- Promoting flood risk management actions that will reduce flood risk to people and property protected by the SPFC.

[1] Legacy communities are defined as communities that are registered as a historic district by either a state or federal entity, or as identified in Public Resources Code Section 32301(f).

-Land use planning in the floodplains protected by the SPFC that will not increase the State's liability.

-Improving flood protection for small communities while evaluating and considering multi-benefit projects that integrate other resources' needs (water supply, ecosystem, recreation, open space, effective flood emergency response, protection of State facilities, storage, etc.), as much as possible.

-Supporting adaptive management of the SPFC for resiliency (i.e., to adapt to changing hydrologic, climate, social, political, regulatory, or ecological conditions). Resiliency includes the capacity to continue to function and recover quickly after damaging floods.

-Supporting a system-wide approach that improves flood management system resiliency and sustainability.

-Improving SPFC operations, maintenance and flood emergency response.

-Promoting ecosystem functions.

-Improving institutional support.

Communities will evaluate structural and non-structural alternatives through feasibility studies. If a feasible alternative is identified, the community may compete for funding for the design and implementation of projects to repair, rehabilitate, reconstruct, replace or expand SPFC facilities to reduce flood risk.

This SCFRR Guidelines document addresses the feasibility study, and design and implementation phases of the program, including funding authority, cost share, eligible applicants and projects, eligible project costs, and the proposal selection process. For specific information about feasibility study proposal preparation, review and selection, refer to the Feasibility Study Phase 1 Proposal Solicitation Package (PSP).

Supplemental documents will be available at the program website to assist applicants in preparing their proposals. These documents include:

- SCFRR PSP for the Feasibility Study Phase 1 (or the Design and Implementation Phase 2 PSP when available): http://www.water.ca.gov/floodmgmt/funding/small-communities.cfm.

- DWR Levee Flood Protection Zone (LFPZ) tool to determine if a community is protected by the SPFC: http://gis.lfpz.water.ca.gov/lfpz/. This website shows the approximate area that could be inundated if a SPFC levee fails or is overtopped. DWR will use this tool to determine whether communities are protected by the SPFC. If a community is near, but not shown as located within the LFPZ, the applicant may submit supporting analyses and documents justifying a finding that the community is protected by the SPFC.

- *Guidelines for Development of State-Led Feasibility Study:* http://www.water.ca.gov/floodmgmt/funding/docs/Final-Draft-Feasibility-Study-Guidance-wAppendices-2014.pdf.
- The 2012 CVFPP.
- State Systemwide Investment Approach (SSIA) (CVFPP Section 3.3 and 3.15).
- *2016 Central Valley Flood System Conservation Strategy* (and subsequent amendments): http://www.water.ca.gov/conservationstrategy/.
- *Cost Share Guidelines for State-Local Cost Shared Flood Programs and Projects* (Cost Share Guidelines): http://www.water.ca.gov/floodmgmt/docs/Cost-Share-Guidelines-Final-12-11-14.pdf.

2. FUNDING AUTHORITY

The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E; Pub. Resources Code, § 5096.800 et seq.) authorizes funding for DWR to repair, rehabilitate, reconstruct, or replace levees, weirs, bypasses and facilities of the SPFC. It also authorizes funds to implement mitigation measures for a project including participation in a natural community conservation plan, pursuant to Fish and Game Code section 2800 et seq.

Proposition 1E requires that the funds be expended while (1) securing the maximum feasible amounts of federal and local matching funds; (2) ensuring prudent and cost-effective use of the funds to the extent that doing so does not prohibit timely implementation of disaster preparedness and flood prevention projects; (3) prioritizing the selection of projects to achieve maximum public benefits from the use of the funds; and (4) supporting an investment strategy that meets long-term flood protection needs and minimizes flood damage.

Due to Proposition 1E funding limitations, DWR will not be able to fund 100-year level of flood protection for every small community within the areas protected by the SPFC unless and until additional funding becomes available for the program. In Phase 1, DWR will provide funding to communities to identify alternatives that address flooding through feasibility studies. In Phase 2, the communities that have completed a feasibility study with a feasible alternative will compete for available funding for project design and implementation.

3. COST-SHARING

Phase 1: For small communities, DWR will fund all reasonable and eligible costs needed to complete a feasibility study, up to a maximum of $500,000 per community. Costs over $500,000 shall be cost-shared at 50 percent between the applicant and DWR.

Phase 2 Design and Implementation: Cost-sharing will be outlined in the Phase 2 PSP and will be determined by the DWR's Cost-Share Guidelines. State cost-share may be increased from the base cost-share of 50 percent if projects meet the following objectives: (1) project protects a disadvantaged community, (2) project contributes to system improvement, (3) project incorporates ecosystem enhancement and restoration through levee setback or other means, and (4) other multi-benefit features.

4. ELIGIBLE APPLICANTS

An applicant must be a local public agency with land use authority for the area where the community protected by the SPFC facilities is located. The applicant may be an incorporated city or a county applying on behalf of an unincorporated community.
For Phase 2, the applicant must be a local public agency and have completed a Phase 1 feasibility study.

5. ELIGIBLE PROJECTS

A project is defined as distinct work that is separately identifiable and physically separable from other work and will, on its own or as part of other work, reduces flood risk for small communities protected by SPFC facilities.

Phase 1: Feasibility Studies

Phase 1 eligible projects are limited to feasibility studies to investigate and recommend actions to reduce flood risk for small communities consistent with the goals of the 2012 CVFPP. A feasibility study is an evaluation and analysis of a proposed project's potential, based on a sufficient level of investigation and research, including alternatives analyses, to support the decision-making process for the preferred alternative. The feasibility studies should be consistent with the *Guidelines for Development of State-Led Feasibility Study*.

The feasibility study process will begin with project scoping, a discussion of problems and opportunities, and formulation of alternatives. It will continue with an alternatives analysis and identification of a preferred alternative. Each study will incorporate quality engineering, economics, real estate, and environmental analyses. The preferred alternative may be a structural or non-structural option, or a combination of both.

Examples of alternatives could include:

- Flood-proofing structures
- Raising structures
- Purchasing structures or property from willing sellers
- Relocating or removing structures from floodplain
- Developing an Emergency Response Plan
- Repairing existing levees
- Raising levees
- Constructing new levees, ring levees or floodwalls
- Constructing setback levees

The feasibility study should consider opportunities to incorporate environmental and other potential benefits (e.g., recreation and water supply) as an integral part of the project. All alternatives identified in the feasibility study must include an Emergency Response Plan if the community does not have one. Any purchases of structures, land, or interests in land for non-structural options must be from willing sellers.

Feasibility studies will include completing a California Environmental Quality Act (CEQA) environmental checklist and identifying CEQA documents anticipated for implementing the preferred alternative. DWR may, at its discretion, fund preparation of CEQA compliance documents if a feasible alternative has been identified through the feasibility study.

Phase 2: Design and Implementation Projects
Upon completion of the feasibility study, an applicant may apply for SCFRR Program funds for project design and/or implementation of the preferred alternative as identified in the DWR-approved feasibility study. Design and Implementation projects will not be required to have completed CEQA at the time the proposal is submitted. CEQA compliance may be included in the project implementation scope of work.

6. PROPOSAL REQUIREMENTS

For proposal requirements, refer to the Phase 1 PSP for feasibility studies. Required materials for Design and Implementation projects will be detailed in a future Phase 2 PSP.

7. ELIGIBLE PROJECT COSTS

Eligible project costs include the reasonable costs of studies, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction, and management. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the funded project, including the portion of overhead and administrative expenses that are directly related to the project.

Eligible project costs include those eligible costs incurred after the date an applicant has entered into a funding agreement with DWR. Note that only incurred project costs are reimbursed by DWR; no advance payments are permitted.

Costs that are <u>not</u> eligible include:

A. Operation and maintenance costs
B. Routine maintenance
C. Purchase of equipment that is not an integral part of the funded project
D. Establishment of a reserve fund
E. Support of existing agency requirements and mandates

F. Any costs for work incurred prior to having an executed funding agreement with DWR
G. Payment of principal or interest on existing indebtedness, any interest payments, or costs associated with project financing
H. Costs incurred as part of any and all necessary response and cleanup activities required under the Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Hazardous Substances Account Act; or other applicable law
I. Duplicate work to obtain new data that the State already has available, unless previously approved by the State or waived by the State
J. Any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the funded project that will be reimbursed with grant funds from DWR.

8. PROPOSAL SELECTION AND FUNDING PROCESS

Feasibility Studies

The review and prioritization process for submitted proposals for feasibility studies will consist of the following steps:

- DWR will review the submitted proposals to ensure proposals' consistency with the CVFPP, SSIA, and Proposition 1E's requirements, and to verify eligibility. DWR may request additional information from applicants during its proposal review process.
- DWR will prioritize the proposals that are complete and consistent with the SSIA based on the ranking criteria in the Phase 1 PSP Appendix 6 and other factors listed in the PSP Section 7.
- DWR will submit a recommended list of projects and award amounts for the DWR Director's approval. Awarded amounts may be for partial funding, may include in-kind work by DWR, and are contingent on final consensus on scope of work and DWR's in-kind contribution.
- DWR will work with each applicant to collaboratively prepare a final scope of work, budget, and schedule for the feasibility study's completion. In some cases, it may be technically desirable to consolidate proposals for two or more nearby communities into a single scope of work, resulting in a single feasibility study.

The final scope of work will represent the State's interest in investing in the small community flood risk reduction feasibility study.

- Once the scope of work, budget, and schedule are finalized, the applicant may enter into a funding agreement with DWR. The funding agreement is an agreement between the funding recipient and DWR covering the terms by which the funding recipient shall work to fund, manage, and complete the project. After execution of a funding agreement, the applicant is referred to as the Funding Recipient.

Design and Implementation Projects

A PSP for Phase 2 Design and Implementation proposals will be released at a future date with the detailed proposal requirements. Projects awarded design and implementation funds will have completed a feasibility study in Phase 1 of the SCFRR Program. The review and ranking process will be similar to that for feasibility studies. DWR will rank the merits of the preferred alternatives proposed by applicants.

Other Requirements

The applicant will need to adopt a resolution authorizing the submission of the proposal for funding from the State; ensuring that it will comply with all laws and regulations applicable to the funding source; and identifying the authorized representative of the applicant who may execute the funding agreement and submit all necessary documents. An example of an authorizing resolution is provided in Attachment 1.

The applicant will coordinate with the regional flood management planning group and other interest groups affected by the proposed project. If funded, the applicant will work closely with DWR and coordinate with local regional flood management groups, reclamation districts, and other interested parties to prepare feasibility studies, design and implement small community projects.

The Funding Recipient shall be responsible for complying with CEQA (Pub. Resources Code § 21000 et seq.) and obtaining all necessary permits and approvals for the project.

9. REQUIREMENTS WHEN SIGNING A FUNDING AGREEMENT WITH THE STATE

9.1 Conflict of Interest and Confidentiality

All participants are subject to State conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the proposal being rejected and any 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.

As part of the conflict of interest requirements, individuals working on behalf of a Funding Recipient may be required by the State 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.

Applicants should be aware that when submitting a proposal to the State, they will waive their rights to the confidentiality of the contents of the proposal. Once final awards have been announced by DWR, all proposals are subject to disclosure pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.).

9.2 Indemnify and Hold Harmless

As part of the funding agreement, applicants shall indemnify and hold harmless the State, its officers, agents, and employees from any and all liability from any claims and damages arising from the planning, design, construction, repair, replacement, rehabilitation, maintenance, and operation of the project, and any breach of the funding agreement.

9.3 Labor Code Compliance

The Funding Recipient will be required to keep informed about and take all measures necessary to ensure compliance with California Labor Code requirements, including, but not limited to, section 1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Lab. Code, § 1720.4), labor compliance programs (Lab. Code, § 1771.5), and payment of prevailing wages for projects funded with public funds (i.e., grant funds).

10. GUIDELINE AMENDMENTS

Any or all of the eligibility criteria, requirements or procedures specified in these Guidelines may be changed, substituted, or terminated, and/or other criteria may be added at the State's discretion. They may also be changed as a result of State legislative actions associated with the passage of the annual State budget or other legislation. Amendments to the final Guidelines will be publicly posted and made available for public comment for at least 45 days.

Appendix 1 – Local Public Agency Authorizing Resolution

Resolution No. _____

A Resolution by the (Governing Body Name) of the (Agency Name) Authorizing a Proposal for funding from the Department of Water Resources and Designating a Representative to Execute the Agreement and any Amendments thereto, for the (Project Name) Project

WHEREAS, the (agency name) is a California Local Public Agency with responsibility for flood management and authority over land use in the area protected by the facilities of the State Plan of Flood Control and is willing to participate in, coordinate, and collaborate with other interested parties that are participating in the development of the (agency name) flood management planning activities;

WHEREAS, the (agency name) is authorized to enter into an agreement with the Department of Water Resources and the State of California;

THEREFORE, BE IT RESOLVED by the (Governing Body Name) of the (agency name) as follows:

1. That pursuant and subject to all of the terms and conditions of the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Pub. Resources Code, § 5096.800 et seq.), the (agency name) shall submit a proposal to obtain funding for the (project name) Project from the Department of Water Resources.
2. That the (Governing Body Name) authorize the (title of authorized representative), or designee, to execute the funding agreement with the Department of Water Resources and any amendments thereto.
3. That the (title of authorized representative), or designee, shall prepare the necessary data, make investigations, and take other such actions as necessary and appropriate to obtain funding for the (project name) Project.

CERTIFICATION
I hereby certify that the foregoing Resolution (#) was duly and regularly adopted by the (Governing Body Name) of the (agency name) at the meeting held on (date), motion by (member name) and seconded by (member name), motion passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Chair, (Governing Body Name)

Attest:

_____
Name and Title

Appendix 2 - Attorney's Certification

(The Applicant's attorney shall answer the following questions regarding this proposal and where indicated, shall cite statutory authority or other references.)

- Is the Applicant a political subdivision of the State of California? ( )Yes ( )No
  Citation:_____
- Does the Applicant have legal authority to enter into a Funding Agreement with the State of California? ( )Yes ( )No
  Citation:_____
- What steps are required by law for the Applicant to sign a Funding Agreement with the State?
  _____
  _____
  _____
  Citation:_____
- What is the statutory authority under which the Applicant may obtain funds for the purpose, amount, and duration requested?
  Citation:_____
- What is the statutory authority under which the Applicant was formed and is authorized to operate?
  Citation:_____
- Is the Applicant required to hold an election before entering into a funding contract with the State? ( )Yes ( )No
  Citation:_____

- Will an agreement between the Applicant and the State be subject to review and approval by other governmental agencies? ( )Yes ( )No
  Identify all such agencies:_____

  _____

  Citation:_____

- Describe any pending litigation that impacts the financial condition of the Applicant or the operation of flood management facilities. If none is pending, so state.

  _____

  _____

- Does the Applicant have legal authority and jurisdiction to implement a flood control program and the authority to make land use decisions at the Project site and in the protected area?
  ( )Yes ( )No
  Citation:_____

I certify that I am a duly qualified and licensed attorney in California representing the Applicant Agency and that I have answered the questions on this page and the preceding page to the best of my knowledge.

By_____ Date_____
(Signature of Applicant Agency's Attorney)

_____
(Printed Name of Applicant Agency's Attorney) *(Title) (Bar No.)*

_____
(Name of Applicant Agency)