

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

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

[insert name of funding recipient]

FOR

[insert Project name]

**FUNDED UNDER THE
STATE- FEDERAL FLOOD CONTROL SYSTEM MODIFICATION PROGRAM
(EARLY IMPLEMENTATION PROGRAM)**

OF

**THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006
AND THE CALIFORNIA SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD
CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006**

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
FUNDING AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
[Insert name of funding recipient]

UNDER THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF
2006 AND THE CALIFORNIA SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD
CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

(Public Resources Code Sections 5096.800 *et seq.* & 75001 *et seq.*)

THIS FUNDING AGREEMENT, entered into by and between State of California, acting by and through the Department of Water Resources, herein referred to as the "State" and the *[insert name of funding recipient]*, a public agency in the County of *[insert County name]*, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

The terms listed below shall have the meaning indicated wherever used in this Funding Agreement.

"Agreement to Seek Credit or Reimbursement:" An agreement entered into by the Funding Recipient with an appropriate legal entity to seek credit or reimbursement from the federal government for funds expended under this Funding Agreement that is entered into in accordance with the provisions of Paragraph 8(d).

"Agreement to Assume Responsibility for OMRR&R:" An agreement entered into by the Funding Recipient with an appropriate legal entity to assume responsibility for OMRR&R on terms similar to those in Exhibit D to this Funding Agreement in accordance with the requirements of Paragraph 24(b).

"Associated Ecosystem Restoration Project:" A Project associated with a flood control Project which is (1) being cost-shared (with non- Cal. Pub. Res. Code Section 5096.821 funds) by the State, (2) not necessary for the flood control project, (3) closely linked to the flood control project, and (4) is for the improvement of a natural system and landscape features including, but not limited to, a project for the control of erosion, the control and elimination of exotic species, including prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. An Associated Ecosystem Restoration Project shall include the planning, monitoring, and reporting necessary to ensure successful implementation of its objectives.

"Betterments:" The design and construction of a Project, Project Element or Project Feature in accordance with standards that exceed the standards that the State would otherwise apply for accomplishing the Project.

"Corps:" The United States Army Corps of Engineers.

“Department:” Refers to the State of California Department of Water Resources (DWR).

“Design Project:” Refers to an EIP Project that does not involve actual construction work. Design Projects involve final design of a Project and could include environmental and other permitting activities and real estate support activities. Design Projects do not include work associated with preliminary Project design, preliminary environmental studies to choose a preferred alternative, construction, or real estate acquisition.

“Eligible Project Costs:” The reasonable and necessary actual costs associated with the Project which are described in Paragraph 7.

“Funding Recipient:” A public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement, and its successors and assigns.

“Independent Review:” A review conducted, at the Department’s discretion, of design and construction activities prior to the initiation of physical construction and periodically thereafter until construction activities are completed on a regular schedule sufficient to inform the Department on the adequacy, appropriateness, and acceptability of the design and construction activities for the purpose of assuring public health, safety, and welfare.

“OMRR&R:” Operation, maintenance, repair, replacement, and rehabilitation of the Project.

“Overall Project Work Plan:” The plan described in Paragraph 22(a) and Exhibit A-1.

“Post Construction Performance Reports:” The reports required by Paragraph 22(e) and further provided in the OMRR&R Agreement.

“Project:” The project described in the Overall Work Plan.

“Project-Associated Work:” Work on a project that is associated with the work to be done under the Overall Work Plan that is not funded under this Funding Agreement. Such work includes, but is not limited to, Betterments, work that provides Supplemental Benefits not necessary for flood protection purposes, and Associated Ecosystem Restoration Project work.

“Project Completion Report:” The report required by Paragraph 22(d) and further described in Exhibit C.

“Project Costs:” The total cost of a Project, including Eligible Project Costs and the cost of any Project-Associated Work.

“Project Element:” A discrete portion of a Project identified in the Overall Work Plan. These are not specific parts of the design-build process; rather, they are discrete physical portions of the actual construction.

“Project Feature:” A discrete portion of a Project Element identified in the Overall Work Plan. These are not specific parts of the design-build process; rather, they are discrete physical portions of the actual construction.

“Project Real Estate Plan:” A plan for acquisition of interests in real estate needed to complete the Project which must be reviewed and approved by the State in accordance with Paragraph 21 and Exhibit F.

“Quarterly Progress Reports:” The reports required by Paragraph 22(c) and further described in Exhibit C.

“Quarterly Work Plans:” The reports required by Paragraph 22(b) and further described in Exhibit C.

“Real Estate Capital Outlay Costs:” Reasonably justified costs for real property interests (fee/easement), private utility line relocation (*i.e.* utility lines serving only one party), damage expenses (wells, fences, irrigation systems) and relocation assistance programs, all of which are to be paid as provided in Paragraph 21(b).

“Real Estate Support Costs:” Reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney’s services fees, engineering services fees, court costs, title and closing costs, and public utility relocations (*i.e.* utilities serving multiple parties).

“Relocation Assistance Plan:” The part of the Project Real Estate Plan which identifies any required relocations and the amount of financial assistance required and authorized for such relocations to occur prepared in accordance with Paragraph 21 and Exhibit F.

“Relocation Assistance Costs:” The portion of the Real Estate Capital Outlay Costs which is attributable to financial assistance for relocation as specified in the Relocation Assistance Plan.

“Routine Maintenance:” Any work required to retain or maintain the intended functions of flood control facilities and of existing encroachments. Maintenance activities include but are not limited to mowing, tree and brush trimming and removal, revetment restoration, rodent control, spraying, painting, coating, patching, burning, and similar works; but do not include any significant excavation or any excavation during flood season.

“Setback Levee:” A new levee constructed completely separate from an existing levee which allows for removal of the existing levee and creation of additional floodplain connected to the stream. In the Delta, a setback levee may not necessarily result in removal of the existing levee.

“State:” The State of California, acting by and through the Department of Water Resources.

“State Program Manager:” Representative for the State and Funding Recipient that will have authority to make determinations and findings with respect to each controversy arising under or in connections with the interpretation, performance, or payment for work performed under the Funding Agreement. The Program Manager may appoint a Project Manager to handle most project management-related tasks.

“State Project Manager:” Representative for the State and Funding Recipient that will receive all notices, demands, requests, consents, or approvals that are required under the Funding Agreement to be in writing. The Project Manager is appointed by the Program Manager and can be changed by the Program Manager upon written notice to all parties to this agreement.

“State Supplemental Cost-Share Cap:” The State/local total investment corresponding to 70% of the investment required to provide an Urban Area with 200 year flood protection benefits.

“Statement of Costs:” A Statement of incurred costs submitted pursuant to Paragraph 15.

“Supplemental Benefits:” Benefits associated with a Project that are not required as mitigation by the California Environmental Quality Act, and meet multipurpose objectives related to habitat,

open space, recreation, impoverished areas, and/or State facilities. Supplemental Benefits may make the Project eligible for an increased state cost share.

“Urban Area:” Any contiguous area in which more than 10,000 residents are protected by project levees.

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing an Early Implementation Program Project under the State-Federal Flood Control System Modification Program pursuant to Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the California Public Resources Code and Division 43 (commencing with Section 75001) of the California Public Resources Code. **[Note that the prior sentence may have to be modified if the Funding Agreement covers an Associated Ecosystem Restoration Project.]** Funds may be used only as provided in this Funding Agreement for Eligible Project Costs for the Project described in Exhibit A-1, Overall Work Plan. The Overall Work Plan includes Project Elements and Project Features as defined in the Overall Work Plan. The Funding Recipient may also construct Betterments, but the additional cost of Betterments will not be considered Eligible Project Costs. The Overall Work Plan shall separately describe any Betterments and any other Project-Associated Work, but will not be funded under this Funding Agreement. **[If applicable, add “The Overall Work Plan shall separately describe the Associated Ecosystem Restoration Project.”]**

This Funding Agreement governs the work described in the Overall Work Plan. If the Overall Work Plan includes design and construction work, such work can be completed in phases. The Funding Recipient may begin design work before its environmental documents are complete, but may not begin the construction portion of the approved Project until all environmental work for the Project Element or Project Feature has concluded. An Overall Work Plan that contains both design and construction work has an additional, mid-Project, State approval requirement; when the Project work transitions from design to construction, the Department must confirm, in writing, that the Project is eligible to move forward into construction. In circumstances where one particular Project Element or Project Feature is ready to begin construction, this approval letter may be issued, but only for the phase that is ready. An additional approval letter will be required from the Department for each subsequent Project Element or Project Feature. As described further in Paragraph 12(e) of this agreement, this approval letter may not be issued if the Funding Recipient has not completed all necessary environmental work for the Project Element or Project Feature.

2. **TERM OF FUNDING AGREEMENT.** The term of the Funding Agreement shall be from the latest date of execution by the Department of Water Resources and approval by the Department of General Services through **[insert last day of fiscal year after that in which construction is scheduled to end or the final accounting package required by Paragraph 21(a)(8) and Appendix F at Paragraph 8 is scheduled to be approved, whichever is later]**.
3. **PROJECT SCHEDULE.** Funding Recipient shall diligently perform or cause to be performed all project work in accordance with the Project Schedule as shown in Exhibit A-1-B or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Exhibit A-1-B, the State reserves the right to exercise the withholding remedies provided in Paragraphs 17-19 of this Agreement.
4. **PROJECT COST.** The reasonable cost of the Project is estimated to be **[insert cost amount]**. **[If applicable, add “The reasonable cost of the Associated Ecosystem Restoration Project is estimated to be ____.”]**
5. **LIMIT ON STATE FUNDS.** Pursuant to the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and 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, State will provide to Funding Recipient in accordance with the terms of this Funding Agreement for the State cost share an amount not to exceed **[insert funding amount]**, except as provided in Paragraph 29. Funding recipients will only be entitled to State funds for Eligible Project Costs, as defined in Paragraph 7, and calculated in accordance with the cost sharing provisions in Paragraph 8. The State may, without requiring an amendment to this Funding Agreement, increase or decrease this amount only as provided for in Paragraph 29.

6. FUNDING RECIPIENT'S COST. Funding Recipient agrees to fund the difference, if any, between the actual Project costs and the amount paid by the State for its share of Eligible Project Costs.
7. ELIGIBLE PROJECT COSTS. Funding Recipient shall only use State funds for Eligible Project Costs. Except as otherwise provided in Paragraph 14(b), Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after November 7, 2006 (date of passage of Propositions 1E and 84) including, but not limited to the following:
 - a) Eligible Real Estate Capital Outlay Costs specified in Funding Recipient's Project Real Estate Plan which must be reviewed and approved by the State in accordance with Paragraph 21;
 - b) Project engineering, design, and construction costs;
 - c) Costs of obtaining necessary environmental permits and associated environmental mitigation costs, where appropriate;
 - d) Costs of obtaining other necessary federal or state governmental approvals;
 - e) Legal fees associated with incurring Eligible Project Costs, such as those listed in (a) through (d) above;
 - f) A proportionate share of reasonable overhead costs; and
 - g) The costs of any Independent Review of the Project.

Costs that are **not** eligible include, but are not be limited to, the following:

- h) Operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") costs, including the costs of Routine Maintenance;
- i) Purchase of equipment that is not an integral part of the Project;
- j) Establishing a reserve fund;
- k) Replacement of existing funding sources for ongoing projects;
- l) Support of existing agency requirements and mandates;
- m) Purchase of land in excess of the minimum required acreage established in Funding Recipient's approved Project Real Estate Plan;
- n) Costs that the State does not authorize as part of final accounting;

- o) Payment of principal or interest of existing indebtedness, or any interest payments, unless the following conditions are met: the debt is incurred after effective date of a Funding Agreement with the State, State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise reimbursable project costs;
- p) Costs incurred as part of any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Account Act or other applicable law; and
- q) With respect to associated environmental mitigation costs, only those costs incurred up to the time of the final accounting under this Funding Agreement may be considered Eligible Project Costs. After that time, any continuing associated environmental mitigation costs will be considered OMRR&R costs.
- r) The costs incurred on work not necessary for flood control purposes done to obtain the Supplemental Benefits of habitat, open space, and recreation; and
- s) The cost of Project-Associated Work, including betterments; and
- t) The costs of an Associated Ecosystem Restoration Project.

8. COST SHARING.

[Funding Recipient will submit a cost-share recommendation along with its application. State will review that recommendation, accept or change it, and finalize it with the Funding Recipient. Before this Funding Agreement is executed, the final cost share formula should be memorialized here. This section provides guidance as to how those agreements should be memorialized, but given the complexities of the cost-share approach, this section should be granted specific attention.]

- a) Eligible Project Costs will be shared by the State and the Funding Recipient on the following basis:

[If Recipient is repairing or improving levee in place.]

The State will pay ____percent (___%) of Eligible Project Costs. Funding Recipient will be responsible for paying the balance. ***[Percentage to be determined by analyzing whether the State's cost-share should be increased because the Project has Supplemental Benefits.]***

[If Funding Recipient is replacing existing levee with a setback levee.]

The State will pay a blended rate of ___% that applies to all Eligible Project Costs for the entire Project. The blended rate reflects a combination of ___% of Eligible Project Costs set forth in the approved repair or improve in place estimate ***[Percentage to be determined by analyzing whether the State's cost-share should be increased because the Project has Supplemental Benefits]*** and 95% of the remaining Eligible Project Costs up to the Limit on State Funds set forth in Paragraph 5. Funding Recipient will be responsible for paying the balance.

[If Funding Recipient's Project has multiple Project Elements or Project Features, with some elements that are being repaired or improved in place and others being replaced with a setback levees.]

The State will pay _____percent (___%) of Eligible Project Costs for Projects, Project Elements and Project Features that are levee repairs or improvements in place. ***[Percentage to be determined by analyzing whether the State's cost-share should be increased because the Project has Supplemental Benefits.]*** For those Projects, Project Elements and Project Features that incorporate a setback levee in lieu of a repair or improvement in place the State will pay a blended rate of ___% that applies to all Eligible Project Costs for the entire Project. The blended rate reflects a combination of ___% of Eligible Project Costs set forth in the approved repair or improve in place estimate ***[Percentage to be determined by analyzing whether the State's cost-share should be increased because the Project has Supplemental Benefits]*** and 95% of the incremental additional Eligible Project Costs that result for constructing a setback levee, but in no event in excess of the Limit on State Funds set forth in Paragraph 5. Funding Recipient will be responsible for paying the balance.

[If Project includes an Associated Ecosystem Restoration Project]

The Associated Ecosystem Restoration Project included in the Overall Work Plan is not funded with money made available by Proposition 1E, Pub. Res. Code § 5096.821. Rather, it is funded with ***[describe funding source]***. The State will pay ___% of the cost of the Associated Ecosystem Restoration Project. Funding Recipient will be responsible for paying the balance.

[For a Design Project]

The State will cost-share 50% of the work associated with a Design Project. If the Project resulting from the Design Project ultimately achieves a higher State cost-share, the State will adjust the difference with the Local Agency. In addition to the 50% State share for the Design Project, the State will provide credits, at a 50% state cost-share, of all *necessary* environmental compliance work (CEQA, NEPA, etc.) completed at the time the Design Project Funding Agreement is executed. No credit will be given for work completed before Propositions 1E and 84 were approved by the voters on November 7, 2006.

[For All Projects, regardless of State Cost Share Level]

b) Funding Recipient understands that these State/Local cost sharing percentages are based on the assumption that the State and the Funding Recipient will have to pay the federal share that would otherwise be paid if this Project were authorized and funded by Congress. Funding Recipient understands, however, that the State is required as a condition of using funds from the Disaster Preparedness and Flood Protection Act of 2006 to seek the maximum feasible cost-share from the federal government and must have the full cooperation of the Funding Recipient in making the arrangements necessary to put the State in a position where Project costs will be eligible for federal credit or reimbursement. Thus, if the Funding Recipient is the local/non-federal sponsor for a federally authorized project, the Funding Recipient agrees:

- 1) The State shall not disburse any funds under this Funding Agreement until the Funding Recipient has submitted a complete application for a federal credit determination by the U.S. Army Corps of Engineers ("Corps") following the procedures authorized by P.L. 99-162 Section 104 and set forth in 33 C.F.R. Part 240 or such other application for federal credit or reimbursement from the Corps as directed by the State and the Corps has issued all approvals necessary for construction contracts. In its sole discretion, the State may waive or modify this requirement provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 26 of this Funding Agreement.

- 2) Funding Recipient shall promptly provide copies of all correspondence relating to the application to the State and will provide timely advance notice of meetings, if any, between the Funding Recipient and the Corps concerning the federal credit or reimbursement application.
- 3) If requested to do so by the Corps, Funding Recipient shall enter into an agreement with the Corps to provide assurances that it will be responsible for OMRR&R for the Project in accordance with federal law and shall indemnify the federal government and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the Project.
- 4) If the Corps decides that amendments to the federal credit or reimbursement application, this Funding Agreement, or new agreements between the Funding Recipient and the State are required for the Corps to provide federal credit or reimbursement, Funding Recipient shall not unreasonably withhold its consent to enter into such agreements.
- 5) Funding Recipient shall diligently pursue obtaining federal credit or reimbursement from the Corps and failure to do so shall be considered an event of default under this Funding Agreement.

If the Funding Recipient is not the local/non-federal sponsor of a federally authorized project, the Funding Recipient agrees to seek federal credit or reimbursement in accordance with Paragraph 8(d) of this Funding Agreement.

- c) Federal credit/reimbursement from the Corps shall be shared between the Funding Recipient and the State in direct proportion to the financial contribution of each party toward the Eligible Project Costs incurred for each Project, Project Element, or Project Feature for which federal credit/reimbursement is provided by the Corps. If the Funding Recipient is awarded federal credit/reimbursement by the Corps for a Project, Project Element, or Project Feature by following the procedures set forth above or through any other means, Funding Recipient will, to the extent permitted by applicable law, provide such federal credit/reimbursement to the State in proportion to the State's contribution to the Project, Project Element, or Project Feature relative to the overall actual Eligible Project Costs incurred for the Project, Project Element, or Project Feature. If the State is awarded federal credit/reimbursement by the Corps for a Project, Project Element, Project Feature by following the procedures set forth above or through any other means, State will, to the extent permitted by applicable law, provide such federal credit/reimbursement to the Funding Recipient in proportion to the Funding Recipient's contribution to the Project, Project Element, or Project Feature relative to the actual Eligible Project Costs incurred for the Project, Project Element, or Project Feature.

If the Funding Recipient is not the local/non-federal sponsor of a federally authorized project, any credits or reimbursement obtained from the federal government shall be shared in accordance with the Agreement to Seek Credit or Reimbursement required by Paragraph 8(d) of this Funding Agreement.

- d) If the Funding Recipient is not the local/non-federal sponsor of a federally authorized project, the Funding Recipient represents and warrants:
 - 1) Funding Recipient has submitted to the State a legally binding Agreement to Seek Credit or Reimbursement with an appropriate legal entity to file a request

for credit or reimbursement from the federal government. The Agreement to Seek Credit or Reimbursement shall commit the appropriate legal entity to comply with terms similar to those that would be required of the Funding Recipient under this Paragraph 8 of the Funding Agreement. This Agreement to Seek Credit or Reimbursement shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.

- 2) Funding Recipient will comply with the terms of this Agreement to Seek Credit or Reimbursement.
- 3) Funding Recipient will not seek funds under this Funding Agreement until an application for credit or reimbursement has been filed in accordance with the Agreement to Seek Credit or Reimbursement.
- 4) In the event that the counter-party to the Agreement to Seek Credit or Reimbursement fails to comply with the terms of the Agreement to Seek Credit or Reimbursement, Funding Recipient agrees that it shall continue to use best efforts to obtain credit or reimbursement from the federal government.

In its sole discretion, the State may waive or modify the requirements of this paragraph provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 26 of this Funding Agreement.

- e) The State will only fund up to 70% of the total investment required to provide an Urban Area with 200 year flood protection benefits. After this State Supplemental Cost Share Cap is reached, the State-Local cost share will revert to 50% State, 50% Local share.
9. **FUNDING RECIPIENT'S RESPONSIBILITY FOR WORK.** Funding Recipient shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and providers of services. Funding Recipient shall give personal supervision to any work required under this Funding Agreement or employ a competent representative, satisfactory to State, with the authority to act for Funding Recipient. Funding Recipient or its authorized representative shall be present while work is in progress. Funding Recipient shall give attention to fulfillment of the Funding Agreement and completion of the Project, and shall keep work under control. Funding Recipient 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 Funding Recipient's contractors and subcontractors. State will not mediate disputes between Funding Recipient and any other entity concerning responsibility for performance of work.
 10. **RELATIONSHIP OF PARTIES.** Funding Recipient is acting in an independent capacity and is solely responsible for design, construction, and OMRR&R. Review or approval of plans, specifications, Project Real Estate Plan, bid documents or other construction documents, and construction inspection by the State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict Funding Recipient's responsibility.
 11. **PERFORMANCE AND ASSURANCES.** Funding Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications under this Funding Agreement and to apply State funds received only to Eligible Project Costs and to OMRR&R in accordance with applicable provisions of the law.
 12. **REQUIREMENTS FOR DISBURSEMENT.** Funding Recipient shall meet all conditions precedent to the disbursement of money under this Funding Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Funding Agreement. State shall

have no obligation to disburse money under this Funding Agreement unless and until the disbursement is in accordance with requirements of the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 and:

- a) Funding Recipient has formally acknowledged the current flood risk or has made arrangements with ***[insert name of Local Agency or Agencies]*** to acknowledge the current flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities or counties and other agencies with flood management responsibilities located in the areas protected by their proposed projects. The resolution or resolutions must be approved by the State in advance of adoption as to matters of both form and substance. The Funding Recipient agrees that each resolution shall provide that any subsequent resolutions that would modify or rescind the resolution must be first approved by the State. State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.
- b) Funding Recipient has provided a copy of a resolution adopted by its governing body accepting the Funds, and designated a representative to execute this Funding Agreement and to sign requests for disbursement of State funds. The resolution must be substantially the same as the draft resolution provided in Exhibit E to this Funding Agreement.
- c) An application for credit or reimbursement has been filed with the federal government as provided for in Paragraph 8 of this Funding Agreement.
- d) Funding Recipient provides assurance that OMRR&R Agreement requirements as provided for in Paragraph 24 of this Funding Agreement will be adhered to as outlined.
- (e) Funding Recipient has demonstrated compliance with (i) all applicable requirements of the CEQA and NEPA and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements. This may not be required for Design Projects.

In addition to the requirement that the Funding Recipient demonstrate completion of all required environmental documents, the Department may not issue the approval letter required for combined design and construction Projects under Paragraph 1 of this agreement until it has completed its environmental work and issued a notice of decision in connection with Project Element, Project Feature or Project for which the approval letter has been requested.

- (f) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports as required by Paragraph 22.
13. **ADVANCE WORK APPROVALS BY STATE.** At least forty-five days prior to awarding a construction contract or initiating construction, whichever is sooner, for any Project, Project Element, or Project Feature, Funding Recipient shall submit to State engineering plans and specifications certified by a California Registered Civil Engineer as to compliance with the approved Project as defined in Paragraphs 1 and 21. No disbursements of funds for the work described will be made until the State has approved the engineering plans and specifications.

Except for the first Quarterly Work Plan, at least forty-five days prior to disbursement of funds by State, the Funding Recipient shall submit a Quarterly Work Plan in accordance with Paragraph 22. No disbursement of funds for the work described in a Quarterly Work Plan will be made until the State has approved the Quarterly Work Plan.

14. PAYMENTS AND CREDITS FOR STATE SHARE OF ELIGIBLE PROJECT COSTS. Eligible Project Costs will be paid or credited by the State in accordance with the cost sharing provisions in Paragraph 8 and according to one or more of the following methods:

- a) Payments for eligible Real Estate Capital Outlay Costs will be made in accordance with the provisions of Paragraph 21.
- b) The State will provide only credit toward the Funding Recipient's share of overall Eligible Project Costs for those construction costs that were incurred after November 7, 2006 and before the effective date of this Funding Agreement assuming the Funding Recipient received a letter approving the work to be credited before the work commenced. The advance approval letter is essential for all construction activities.
- c) The State will provide credit towards the Funding Recipient's share of overall Eligible Design Project costs that were incurred after November 7, 2006, but before the effective date of the Funding Agreement if those costs were necessary for the completion of environmental work (CEQA, NEPA, etc.) directly related to the Design Project.

If the Funding Recipient seeks credit for Eligible Project Costs under Paragraph 14(b) or 14(c) above, the Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 15. The Statement of Costs shall be submitted within 7 days of the effective date of this Funding Agreement. The State may provide credit, at its sole discretion, for these Eligible Project Costs if it finds that they were incurred for implementation of the Project. Design and Construction Credit will be limited to Eligible Project Costs expended by the Local Agency after it received written approval by the State of proposed expenditures, and assuming the costs were incurred in a manner consistent with any conditions in the State's written approval. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs.

- d) This subpart sets forth a process for advance payments of the State share of Eligible Project Costs. Advance payments are made on the basis of estimated budgets included in Quarterly Work Plans and are adjusted quarterly on the basis of a statement of actual Eligible Project Costs.

As soon as possible prior to commencement of the work to be performed from the effective date of this Funding Agreement through the end of the calendar quarter and forty-five days prior to each calendar quarter thereafter, Funding Recipient shall submit to State a Quarterly Work Plan for each calendar quarter in accordance with Paragraph 22. State shall receive and approve the proposed work and cost estimate provided in the Quarterly Work Plan. State shall pay in advance on a quarterly basis for approved Eligible Project Costs (excluding Real Estate Capital Outlay Costs) its cost share of the work covered in the Quarterly Work Plans submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 15. If State determines that advances in that quarter exceed actual costs in that same quarter, such amounts may be applied against advances in succeeding quarters.

If State determines that advances exceed the State's share of total actual Eligible Project Costs, State may withhold advance payments equal to amounts advanced in excess of

the State's share of Eligible Project Costs, but only after Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Funding Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of 25 percent (25%). This withholding will be held until the required Statements of Costs are provided, at which point the detailed expenditures will be adjusted accordingly. The expenditure calculation shall be subject to withholding in accordance with Paragraph 17.

15. STATEMENT OF COSTS. Documentation for eligible real property capital outlay costs will be completed in accordance with Paragraph 21. For all other costs (including Real Estate Support Costs), Funding Recipient shall provide State with a Statement of Costs or Statements of Costs, on forms provided by State.
 - a) Statements of Costs shall be filed monthly or for such longer periods as State and Funding Recipient may mutually agree. Funding Recipient shall provide a statement of the incurred Eligible Project Costs for work performed during the period identified in the particular statement. Each Statement of Costs shall also include: (1) information required to verify that claimed costs were incurred, such as contractor and vendor invoices and receipts for equipment and supplies; (2) a statement of Funding Recipient's payments made to cover its share of Eligible Project Costs, if applicable; and (3) a comparison of the actual incurred Eligible Project Costs with those projected in the Quarterly Work Plans and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Work Plan budget.
 - b) If the Funding Recipient is receiving an increased cost share because the Project provides Supplemental Benefits relating to open space, habitat, or recreation, the Final Statement of Costs shall also provide information sufficient to demonstrate that the Funding Recipient's commitment to provide Supplemental Benefits has been fulfilled. The amount of funding the Funding Recipient receives for Supplemental Benefits will depend on this accounting of actual Supplemental Benefits provided. If the Department owes the Local Agency for additional unintended Supplemental Benefits provided, it will pay for those costs. Conversely, if the Local Agency did not produce the anticipated Supplemental Benefits it will need to compensate the Department accordingly. If applicable, the Statement of Costs shall also include a separate section for the costs of the Associated Ecosystem Restoration Project.
 - c) The State will review each Quarterly Work Plan and each Statement of Costs to determine whether claimed costs are, in the opinion of the State, Eligible Project Costs and whether the Funding Recipient has provided adequate information to verify that claimed expenses were incurred. If applicable, the Statement of Costs shall also include a separate section for the costs of the Associated Ecosystem Restoration Project.
 - d) State may reject a Statement of Costs if: (1) it is submitted without signature; (2) it is submitted under signature of a person other than Funding Recipient's Program or Project Manager; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 15(g). State will notify Funding Recipient of any Statement of Costs so rejected, and the reasons therefore.
 - e) A Statement of Costs containing a mathematical error will be corrected by State, after a telephone call or email to Funding Recipient; and will thereafter be treated as if submitted

in the corrected amount. State will provide Funding Recipient with notification of the corrected Statement of Costs.

- f) State will notify Funding Recipient by mail, whenever, upon review of a Statement of Costs, State 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 Funding Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Funding Agreement; or (3) are not supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). Funding Recipient 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 20.
 - g) A Project, Project Element, or Project Feature will be considered completed when as-built-drawings provided to the State, pursuant to Paragraph 17 or Paragraph 22(d) are approved by the State. Upon completion or termination of the Project or any Project Element or Project Feature, Funding Recipient shall furnish to State, within sixty (60) days, a final Statement of Costs for the Project, Project Element, or Project Feature. Periodic cost statements and the Final Statement of Costs shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as provided in Paragraph 5 and those costs that represent Funding Recipient's costs, Paragraph 6.
 - h) All Statements of Costs shall be accompanied by a statement signed by the Funding Recipient's Program or Project Manager 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.
 - i) At the sole discretion of the State, the State may modify the requirements for preparation and submittal of Statements of Costs 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.
16. **DISBURSEMENT.** Consistent with Paragraphs 12 and 14, State will disburse to Funding Recipient the amounts approved, subject to the availability of funds. Funds will be disbursed by State in accordance with the cost-sharing provisions in Paragraph 8, the relative payment obligations of Funding Recipient, Paragraph 6, and State, Paragraph 5, up to the Total Project Cost, Paragraph 4. Any and all money disbursed to Funding Recipient under this Funding Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.
17. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed pursuant Real Estate Capital Outlay and Eligible Project Costs Advances, the State shall withhold ten percent (10%) of the State share until the Project Element of the Project for which the payment is made is completed or, if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed. A Project, Project Element, or Project Feature shall not be considered completed until: (1) the work on such Project, Project Element, or Project Feature

has been completed to the State's satisfaction; (2) a final Statement of Costs has been submitted for Eligible Project Costs for the Project, Project Element, or Project Feature; (3) as-built drawings satisfactory to the State have been submitted to the State; and (4) for a Project, Project Element, or Project Feature, a certification of a Registered Civil Engineer that that portion of the Project has been built in compliance with the plans approved by the State pursuant to Paragraph 13, is approved by State. If State determines that the Project is not being constructed substantially in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply substantially with the provisions of this Funding Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests.

18. WITHHOLDING THE BALANCE OF FUNDING AMOUNT. Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 17, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by State. Refusal of Funding Recipient to repay may, at the option of State, be considered a breach of agreement and may be treated as default under Paragraph 20.
19. WITHHOLDING THE ENTIRE FUNDING AMOUNT. If State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to Paragraph 17, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient and the State shall no longer be required to provide funds under this Funding Agreement.
20. DEFAULT PROVISIONS AND DISPUTE RESOLUTION. Funding Recipient will be in default under this Funding Agreement if any of the following occur:
 - a) Breach of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
 - b) Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement; or
 - c) Failure to make any remittance required by this Funding Agreement.

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

- d) Declare the funds be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default;
- e) Terminate any obligation to make future payments to Funding Recipient;
- f) Terminate the Funding Agreement; and
- g) Take any other action that it deems necessary to protect its interests, including but not limited to completing the work and requiring the Funding Recipient to pay the cost of the work, less the State cost share.

If a Funding Recipient fails to provide the Supplemental Benefits it agreed to complete in exchange for a higher State cost share under Paragraph 8, the State may sanction the Funding Recipient. The sanction is a two-step process. First, the State must warn the Funding Recipient and provide it with time to cure the problem as described above. If the Funding Recipient does not cure, the State may require the Funding Recipient to return the money the State paid in excess cost share. To effectuate this repayment, the State may withhold funds from future scheduled payments to the Funding Recipient, consistent with Paragraphs 18 and 19 of this agreement.

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

Before either party to this Funding Agreement may bring suit in any court concerning an issue relating to this Funding 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 Funding Agreement, the existence of a dispute shall not excuse the parties from performance pursuant to this Funding Agreement.

In the event State finds it necessary to enforce any provision of this Funding Agreement in a court of law, Funding Recipient agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

21. **LAND ACQUISITION PROCESS.** Unlike other Eligible Project Costs, certain expenditures made for land acquisition under this Funding Agreement will require review and approval in accordance with the State's established procedures for land acquisition. Thus, the procedures for obtaining payment of the State's share of certain eligible project real estate costs will differ significantly from the procedures used for obtaining payment of other Eligible Project Costs. In particular, costs associated with Real Estate Capital Outlay Costs are subject to the provisions set forth in this Paragraph 21. Paragraphs 14 to 19 do not apply to Real Estate Capital Outlay Costs. Real Estate Support Costs are subject to payment as provided in Paragraphs 14 to 19. The cost of damage expenses directly attributed to construction activities, which are handled through project construction contracts, may be considered Eligible Project Costs and will be reimbursed as set forth in Paragraph 14 to 19.

Only costs incurred in a manner consistent with an approved Project Real Estate Plan as detailed in this paragraph will be considered Eligible Project Costs under this Funding Agreement. The applicable land acquisition standards and requirements as set forth in Exhibit F shall apply to this Funding Agreement.

- a) Project Real Estate Plan. Funding Recipient, after consultation with State, shall determine the lands, easements, and rights-of-way necessary for construction and OMRR&R, including those rights required for the flood control structures, temporary construction areas, mitigation sites, borrow sites, spoil sites, access/haul routes, staging areas, private utility relocations, providing relocation assistance for qualified occupants of acquired property, as required by state and federal statutes, rules, and regulations.

Funding Recipient will submit to State a Project Real Estate Plan. Sample guidelines for such a plan, to establish acceptable Project Real Estate Requirements will be provided upon request by the State. The Project Real Estate Plan shall include such details as

narrative description of the real estate requirements including a break down of Funding Recipient's estimate of total acreage to be acquired, type of real property interests to be acquired, and cost projections of eligible real estate project costs. The Project Real Estate Plan shall also include lands needed for other project purposes, such as mitigation and other regulatory needs and identify proposed end land uses for project lands. The Project Real Estate Plan shall also include: a property owner tract register (matrix), identifying impacted property owners, real property interest to be acquired, and area of acquisitions; a real estate requirement map exhibit; and design plans and specifications. Funding Recipient may submit the Project Real Estate Plan by Project, Project Element, or Project Feature.

Funding Recipient's Project Real Estate Plan shall be based on, at a minimum, 65% designs, plans and specifications, which shall include: topographic drawings with the project design features illustrated; assessor parcel numbers (APN), property lines, flood control structure, private utility relocations with the responsible party to relocate or protect in place noted; mitigation sites, borrow sites, spoil sites, access/haul routes, and staging areas

Funding Recipient's Project Real Estate Plan will include a baseline cost estimate for eligible real estate project costs. State shall provide Funding Recipient with a written approval of the Project Real Estate Plan. Funding Recipient is at risk of not receiving cost-sharing for land acquisition activities performed prior to receiving State's approval of the Project Real Estate Plan.

Funding Recipient shall provide or acquire all necessary real property services for all parcels in support of approved Project Real Estate Plan in accordance with the land acquisition process described in this Funding Agreement, including the services, and materials necessary to fulfill the land acquisition process and accomplish the following tasks:

- 1) Geodetic services including field surveys, examination of title to all parcels, including obtaining preliminary title reports, or litigation guarantees, clearance of exceptions to title, policy of title insurance, the preparation of legal descriptions, maps and deeds.
- 2) Appraisal of all parcels establishing the fair market value.
- 3) Environmental site assessment reports to determine the existence of hazardous and toxic waste materials.
- 4) Preparation of written offer including necessary acquisition documents including purchase funding agreements, maps and deeds for all parcels. Funding Recipient will also prepare all other necessary temporary entry permits, rights of entry, borrow and spoil agreements.
- 5) Negotiations for the acquisition of all parcels by deed and contract and/or condemnation. For parcels being acquired by condemnation, an order of possession shall be deemed "acquisition."
- 6) Preparation of memorandums of settlement, a sample of such to be provided by State to Funding Recipient upon request, for transactional review and approval including settlement justification, escrow instructions worksheet and closing.

- 7) Escrow and closing services required to consummate the transaction which are called for in the purchase Funding Agreements including clearing title at close of escrow, funding, and issuance of a policy of title insurance.
- 8) Preparation of a land acquisition final accounting package.
- 9) Preparation of a Relocation Assistance Plan.

Descriptions of these activities are set forth in detail in Exhibit F to this Funding Agreement.

Funding Recipient shall: (1) keep State apprised of its land acquisition activities and the activities of its contractors; (2) consult with State on matters concerning compliance with State and federal acquisition rules and regulations; (3) Keep State apprised of all lease activities; and (4) provide complete access as requested to its records relating to such land acquisition.

- b) Real Property Acquisition Disbursement Process. For acquisition of title or other interest in each parcel of land, Funding Recipient may utilize any of the three disbursement approaches. The first, set forth in subpart 1 below, is the standard approval process and provides the Funding Recipient with 100% of the State's cost share for Real Estate Capital Outlay Costs upon the Funding Recipient's completion of all land acquisition requirements as set forth in Exhibit F. The second approach, set forth in subpart 2 below, provides a mechanism whereby the State will advance funding to the Funding Recipient for real estate capital outlays prior to completion of all land acquisition requirements set forth in Exhibit F. Under this approach, Funding Recipient is not guaranteed to receive 100% of its eligible Real Estate Capital Outlay Costs. The final approach, set forth in subpart 3 below, provides the process under which the State will advance Real Estate Capital Outlay Costs and, to the extent required by law, any Real Estate Support Costs for condemnation proceedings. Because the Funding Recipient may need to condemn only some of the parcels required to complete the Project, the State anticipates the Funding Recipient may utilize more than one of the three disbursement approaches.
- 1) Standard Disbursement Approach. Upon completion of the applicable land acquisition standards and requirements set forth in Exhibit F to this Funding Agreement, including the submission of a land acquisition final accounting package for the entire project, the State will disburse 100% of its cost share of real estate capital outlays to Funding Recipient.
 - 2) Advancement of State Cost Share Prior to Completion of Land Acquisition Requirements. If requested by Funding Recipient, the State will advance fifty percent (50%) of the State cost share of the appraised fair market value of the property after State completes its preliminary review of the appraisal and environmental site assessment, and remediation plan if necessary, for the property. The advance will be made directly to an escrow account established to hold funds for the seller of the parcel for release upon closing. At closing, the State will advance into the escrow account for immediate release to the seller another twenty-five percent (25%) of the State cost share of the appraised fair market value of the property. The State will then reimburse Funding Recipient for the remaining State cost share of the price paid for the property plus any unpaid associated capital outlays, up to the approved value of the real estate capital outlays, after Funding Recipient has followed the entire approval process including the submission of a land acquisition final accounting package for

individual parcels. If the amount approved is less than the amount already paid to Funding Recipient, the difference will be deducted from the State cost share for other project expenses not yet reimbursed to Funding Recipient. If the State cost share of the approved fair market value is higher than the State cost share of the amount outlined for capital outlays in Funding Recipient's Project Real Estate Plan, the State will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Funding Agreement, Paragraph 5. Any necessary environmental remediation shall be completed prior to transfer of the property to the State and the payment of the remaining State cost share.

- 3) Eminent Domain Disbursement Procedures. If eminent domain proceedings are necessary pursuant to applicable law, including Gov't Code Section 7267.1, following its preliminary review of the independent appraisal of the parcel submitted by the Funding Recipient, the State will: (1) advance 100% of the State cost share of the fair market value of the parcel, as determined by the independent appraisal; and (2) any additional associated Real Estate Capital Outlay Costs and Real Estate Support Costs, as required by applicable law, with the Court. At the sole discretion of the State, the State may become a party to the condemnation proceeding. The funding and reimbursement procedures described further below will be implemented whenever eminent domain proceedings are required.

After all other appraisals, transaction, cadastral, geodetic, and environmental site assessment reviews and a Court order approving the condemnation of the property, the State will pay the State cost share of the Court approved total just compensation for the parcel minus what has been advanced before. Provided a Court Order approving the condemnation of the property has been made, no additional review by the Department of General Services is required. However such payments will be subject to the cap on total funds established in the Funding Agreement, Paragraph 5. Therefore, if the State cost share of the Court approved total just compensation is higher than the State cost share of the amount outlined for the property acquisition in Funding Recipient's Project Real Estate Plan, the Department will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Funding Agreement.

- c) Relocation Assistance Cost. If requested by the Funding Recipient, the State shall advance seventy-five percent (75%) of the State cost share of the Relocation Assistance Costs specified in the Relocation Entitlement Report (less than 15 relocations) or the Relocation Assistance Plan (15 or more relocations) after State completes its preliminary review of either document. The State will then reimburse Funding Recipient for the remaining State cost share for Relocation Assistance Costs, after the Relocation Entitlement Report or Relocation Assistance Plan has been approved by the Department of General Services. Sample guidelines for Relocation Entitlement Reports and Relocation Assistance Plans will be provided upon request.
- d) Real Estate Credit. If the Funding Recipient seeks reimbursement of eligible Real Estate Capital Outlay costs for a parcel where just compensation has been paid and the escrow account has closed, or after a Final Order of Condemnation has been issued, the State shall issue credit for such eligible Real Estate Capital Outlay costs. The State will only provide credit toward the Funding Recipient's share of eligible Real Estate Capital Outlay costs incurred after November 7, 2006 and before the effective date of this Funding Agreement. The procedures for obtaining credit of the State's share of certain eligible

project costs will require review and approval in accordance with the State's established procedures for land acquisition. In particular, Real Estate Capital Outlay costs are subject to the provisions set forth in this Paragraph 21. Eligible Real Estate Capital Outlay costs where the acquisition of a parcel has not closed escrow or has not been issued a Final Order of Condemnation shall be considered an open transaction and can be considered for reimbursement.

- e) Surplus Land. In the event any lands, easements, or rights of way acquired by Funding Recipient are not used for the Project, such lands, easements or rights of way shall be deemed a remnant and may be sold. Upon the sale of remnant property, the State shall receive the percentage of the proceeds that is the State share under Paragraph 8. Alternatively, Funding Recipient may elect to retain ownership by paying State the percent of the appraised value that is the State share under Paragraph 8. State shall have a right of first refusal on any remnants offered for sale by Funding Recipient. State's right of refusal shall remain open for 60 days after Funding Recipient gives written notice.
- f) Leased land. In the event any land acquired by Funding Recipient is subject to a lease or leases, Funding Recipient shall ensure that any such leases are identified in the Project Real Estate Plan, including arrangements that address what happens to such lease interests upon acquisition of title by the State. All proposed lease agreements must be approved by the State prior to negotiation and execution by the Funding Recipient. State must be given notice of all proposed modifications to lease agreements and must approve such modifications in writing before they are effective. Sample guidelines for lease agreements will be provided upon request.

In any event, all net proceeds received by Funding Recipient from any such lease agreement shall be applied as a credit to the State on Statements of Costs submitted pursuant to Paragraph 15 of the Funding Agreement. Lease Credits need to be reported in the Quarterly Progress Reports. No land necessary for construction of the funded improvements shall be subject to a lease when conveyed to the State without the express written consent of the State. Any other land acquired by the Funding Recipient to be transferred to the State under this Funding Agreement shall not be subject to any lease for longer one year without the express written consent of the State

- g) Land Acquisition Closeout. A final accounting of Real Estate Capital Outlay costs for a Project, Project Element, or Project Feature shall be included with the Final Statement of Costs and Project Completion Report.

22. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.

- a) Overall Work Plans: An Overall Work Plan, Budget, and Schedule for the Project are included as Exhibit A to this Funding Agreement.
- b) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Funding Agreement. Within seven (7) days of the effective date of this Funding Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Funding Agreement and the end of that calendar quarter and then quarterly thereafter. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days before the work covered by the plan is scheduled to begin. Exhibit C,

Quarterly Work Plan and Report Formats, provides an example template for the Quarterly Work Plan.

- c) Quarterly Progress Reports: Funding Recipient shall submit progress reports on the status of the Project to State. Progress reports shall be filed quarterly. No later than 60 days after the time period covered by a Quarterly Work Plan, the Funding Recipient shall submit a Quarterly Progress Report for the time period covered by the Quarterly Work Plan. The submittal and approval of these reports is a requirement for continued disbursement of State funds. Quarterly Progress reports shall summarize the work completed during the reporting period, include a statement of construction progress compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project. The reports shall include total interest earned to date on State funds, and any Lease Credits due to the State from Lease agreements, if any. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template. The Funding Recipient may request in writing that the State grant permission to combine the Quarterly Progress Report required by this paragraph with other reports required by this Funding Agreement and the State may, at its sole discretion, approve such a request.
- d) Project Completion Report: Funding Recipient shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks associated with the Project. The Final Project Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project and three sets of as-built drawings. The Project Completion Report shall also include certification of final Project by a registered civil engineer, consistent with Paragraph B-8 of this Funding Agreement. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template.
- e) Post Construction Performance Reports: After Project completion and within ninety (90) calendar days after the date of submission of the Project Completion Report, Funding Recipient shall submit a summary of the operations for the Project. This report shall include: ***[insert as appropriate for Funding Agreement]***. Funding Recipient shall also report any additional costs and/or benefits deriving from the Project. This record keeping and reporting process shall be repeated annually as provided in the OMRR&R Agreement.

[Include if there is an Associated Ecosystem Restoration Project]

Associated Ecosystem Restoration Project: The work plans and reports described in paragraphs (a) through (e) above shall include information regarding any Associated Ecosystem Restoration Project. The State will determine the extent of the information required concerning Associated Ecosystem Restoration Project on a case-by-case basis in consultation with the Funding Recipient.]

- f) Project-Associated Work: The work plans and reports described in paragraphs (a) through (e) above shall include information regarding any Project-Associated Work, which is work on projects that are associated with the work to be done under the Overall Work Plan, but will not be funded under this Funding Agreement. The State will determine the extent of the information required concerning Project-Associated Work on a case-by-case basis in consultation with the Funding Recipient.
- g) Compliance with Executive Order S-02-07: At the sole discretion of the State, the State may modify the requirements for preparation and submittal of work plans and reports

called for in this Funding 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.

23. SAFETY AND EMERGENCY RESPONSE PLANS. Funding Recipient agrees to provide State an acceptable detailed safety plan before completion of the Project. The safety plan will be consistent with the requirements for such plans codified at Cal. Water Code § 9650(b). The Funding Recipient agrees to use best efforts to ensure that the safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan. Failure to meet these requirements may, at the option of State, be considered a breach of the Funding Agreement and may be treated as default under Paragraph 20. Funding Recipient shall update the plan as provided in the OMRR&R agreement attached hereto as Exhibit D.

24. OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION.

- a) Funding Recipient agrees to provide State an acceptable detailed interim OMRR&R manual at least 120 days before completion of the first Project, Project Element, or Project Feature which shall be consistent with the requirements of 33 C.F.R. § 208.10 and other applicable Corps engineering regulations.
- b) Funding Recipient agrees that it will execute an agreement with the Central Valley Flood Protection Board, or a successor thereto, substantially in the form of Exhibit D to this Funding Agreement, which sets forth the obligations of the Funding Recipient to do the OMRR&R work for the Project. Refusal of Funding Recipient to do the OMRR&R work in accordance with this Exhibit D may, at the option of State, be considered a breach of this Funding Agreement and may be treated as default under Paragraph 20.

If the Funding Recipient is not currently responsible for OMRR&R of the associated federally authorized project, the Funding Recipient represents and warrants:

- 1) Funding Recipient has submitted a legally binding Agreement to Seek Responsibility for OMRR&R with an appropriate legal entity which requires that legal entity to seek to enter into an OMRR&R agreement with the Central Valley Flood Protection Board, or any successor thereto that is substantially in the form of Exhibit D to this Funding Agreement. This Agreement to Seek Responsibility for OMRR&R shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.
- 2) Funding Recipient will comply with the terms of this Agreement to Seek Responsibility for OMRR&R.
- 3) In the event that the counter-party to the Agreement to Seek Responsibility for OMRR&R fails to comply with the terms of the Agreement to Seek Responsibility for OMRR&R, Funding Recipient agrees that it shall seek to assume responsibility for OMRR&R.

In its sole discretion, the State may waive or modify the requirements of this paragraph provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 26 of this Funding Agreement.

- c) Funding Recipient or the legal entity responsible for OMRR&R must execute a legally binding agreement with the Central Valley Flood Protection Board that sets forth the

Funding Recipient or responsible legal entity's obligations to perform the OMRR&R work for the Project not later than the point at which 25% of the Project funds have been extended.

- (d) If requested to do so by the State, Funding Recipient agrees that it shall provide a written notice to landowners and other affected interests of the extent of protection afforded by the Project not less than once each year. The contents of this written notice will be determined by the State and may include the types of statements codified at Cal. Water Code § 9121(b). Funding Recipient further agrees that all costs of providing such information will be borne by the Funding Recipient and that the obligation to provide such information to landowners will extend beyond the term of this Funding Agreement.

25. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Funding Recipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or OMRR&R for the Project. Funding Recipient shall be responsible for observing and complying with any applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances.

Without limiting the foregoing, Funding Recipient shall keep informed of and take all measures necessary to ensure compliance with 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.

[Insert the following addition to the paragraph above if the Project is to be funded with Prop. 84 funds]: Pursuant to the provisions of Prop. 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Cal. Pub. Res. Code § 75076 *et seq.*, the Funding Recipient must have a labor compliance program that meets the requirements of California Labor Code Section 1771.5. Written evidence of the Labor Compliance Program shall be submitted to the State.]

26. PROGRAM AND PROJECT MANAGERS. Either party may change its Program or Project Manager upon written notice to the other party.
- a) State's Program Manager: Shall be the Chief, Division of Flood Management, Department of Water Resources. State's Program Manager shall be State'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 of work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.
 - b) Funding Recipient's Program Manager: Funding Recipient's Program Manager shall be ***[insert job title]***. Funding Recipient's Program Manager shall be the Agency's representative for the administration of the Funding Agreement and shall have full authority to act on behalf of the Agency, including authority to execute all payment requests. The Funding Recipient's Program Manager may delegate tasks to the Funding Recipient's Project Manager.
27. NOTICES. 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 Project Manager. Notices may be sent by any of the following means: (i) by delivery in person; (ii) by

certified U.S. mail, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by facsimile transmission, followed by submission of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by U.S. mail will be deemed effective five (5) business 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, change its Project Manager or designate a different address that shall be substituted for the one below:

State of California
Department of Water Resources
Division of Flood Management
Attention: Project Manager
Early Implementation Program
3310 El Camino Avenue Room 180
Sacramento, California 95821

(Representative)
(Funding Recipient Name)
(Mailing Address)

28. INCORPORATION OF EXHIBITS. This Funding Agreement incorporates:

Exhibit A, Overall Work Plan, Budget, and Schedule
Exhibit B, Standard Conditions
Exhibit C, Quarterly Work Plan and Report Formats
Exhibit D, Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement
Exhibit E, Draft Resolution Accepting Funds
Exhibit F, Land Acquisition Process Requirements

29. MODIFICATION OF OVERALL WORK PLAN. At the request of the Funding Recipient, the State may, at its sole discretion, approve non-material changes to the portions of Exhibit A which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Commitment set forth in Paragraph 4. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement which is set forth in Paragraph 2 of the Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.

The State may, without amending this Funding Agreement, increase the State Funding Commitment set forth in Paragraph 4 in two circumstances. First, if (a) at the Department's direction changes in the scope of the Overall Work Plan require an increase in funding then the State may increase funding up to ten percent (10%). Second, if the State requests an Independent Review of Funding Applicant's Project (as set forth in Paragraph 31), the Independent Review panel concludes that material changes must be made to the Funding Recipient's design and/or construction plan and the State concurs that such changes must be made then the State may increase funding by up to 15%. The total allowable increase of Eligible Project Costs on a Project without requiring an amendment to this Funding Agreement is 15%.

If the Funding Recipient and the State agree to a material change with respect to the Overall Work Plan that decreases the Project Cost in Paragraph 4, the parties agree there shall be proportionate reduction in the limit on state funds set forth in Paragraph 5.

If the State Program Manager approves a material change pursuant to the provisions of this paragraph, the Funding Recipient shall include information regarding the material change in the reports required by this Funding Agreement. Within a reasonable time after the material change is approved, the State and the Funding Recipient shall also formally amend this Funding Agreement to reflect the material change.

30. **MODIFICATION OF PROJECT-ASSOCIATED WORK.** The Funding Recipient shall notify the State if it proposes to make a change to Project-Associated Work described in the Overall Work Plan in Exhibit A that will cause a material change to cost, cost-sharing, effectiveness or schedule of the work that is being funded under this Funding Agreement. Failure to comply with this provision will be considered an event of default under this Funding Agreement.
31. **INDEPENDENT REVIEW.** At its sole discretion the Department may order an Independent Review of Funding Recipient's design and construction plan. The costs of the Independent Review will be paid by the Funding Recipient, but are Eligible Project Costs and the State will reimburse the Funding Recipients at the rate determined in the cost share agreement. The Funding Recipient agrees to cooperate fully with the State in conducting the Independent Review and agrees to make any required change to the Overall Work Plan if the Independent Review should suggest changes and the Departments chooses to implement the changes. Modifications to the Overall Work Plan shall be made in accordance with Paragraph 29 of this Funding Agreement.
32. **FUNDING RECIPIENT COMMITMENTS.** Funding Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for California Disaster Preparedness and Flood Prevention Bond Act of 2006 and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 financing.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement as of ***[insert date]***.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

FUNDING RECIPIENT

By _____
(Name)
Chief, Division of Flood Management

By _____
(Name)
(Title)

Date: _____

Date: _____

Approved as to Legal Form
And Sufficiency:

Approved as to Legal Form
And Sufficiency:
Funding Recipient Counsel

By _____
(Name)
Assistant Chief Counsel

By _____
(Name)
(Title)

Date: _____

Date: _____

Exhibit A

OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE

Directions: Funding Recipient shall prepare an Overall Project Work Plan, Overall Project Budget, and Overall Project Schedule. In preparing these documents, if the Project has separable elements, Funding Recipient shall define the Project Elements and provide separate budgets and schedules for each Project Element. If any Project Element can be further divided into Project Features, Funding Recipient shall define the Project Features and provide separate budgets and schedules for each Project Feature. If the Project includes Betterments, the Overall Work Plan can include information regarding these Betterments, but the Work Plan shall clearly indicate what work is a betterment and shall separately identify the cost of the betterment in the budget since such costs are not Eligible Project Costs under this Funding Agreement.

If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the Overall Work Plan should include information regarding the scope of the Project-Associated Work and a budget and schedule for this work.

If implementation of the Overall Work Plan will be done in conjunction with Associated Ecosystem Restoration Project, the Overall Work Plan should include information regarding the scope of the Associated Ecosystem Restoration Project and a budget and schedule for this work.

Funding Recipients should include all work to be done with the respect to a Project in the plan, budget, and schedule, but should be careful to clearly indicate whether work that is included is Project-Associated Work.

The Overall Work Plan should be organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE

Funding Recipients should also note that, while the Funding Agreement requires the Funding Recipient to submit the first Quarterly Work Plan within seven days of the effective date of the Funding Agreement, the Quarterly Work Plan will not be a part of this Funding Agreement.

EXHIBIT B STANDARD CONDITIONS

B-1 GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

B-2 TIMELINESS: Time is of the essence in this Funding Agreement.

B-3 AMENDMENT: This Funding 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 Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

B-4 SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

B-5 AUDITS: State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in paragraph 20 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the Funding Recipient shall be subject to the examination and audit of State for a period of three years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or subcontractors shall be preserved for this purpose for at least three (3) years after Project completion.

Funding Recipient is aware that special audit provisions apply to this funding commitment pursuant to Cal. Pub. Res. Code §§ 75078, 75079 and shall cooperate fully with the State in complying with these audit provisions. At the sole discretion of the State, the State may waive compliance with these special audit provisions if the source of the funds provided to the Funding Recipient is limited to funds made available by the California Disaster Preparedness and Flood Prevention Bond Act of 2006, Cal. Pub. Res. Code Chapter 1.699, rather than the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Cal. Pub. Res. Code Division 43.

B-6 ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a) **Separate Accounting of Funding Disbursements and Interest Records:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Funding Recipient 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 State at any and all reasonable times.
- b) **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.

- c) Remittance of Unexpended Funds: Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) days of the expiration of the Funding Agreement, which ever comes first.

B-7 COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

B-8 FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement. Funding Recipient shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.

B-9 INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State. State shall also have the right to inspect the Project under the terms set forth in the OMRR&R Agreement included as Exhibit D to this Funding Agreement.

B-10 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 Funding 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 Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests, as provided in paragraph 20.

B-11 ACKNOWLEDGEMENT OF CREDIT: Funding Recipient shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Funding Agreement. During construction of the Project, Funding Recipient shall install a sign at a prominent location which shall include a statement that the Project is financed under the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, State-Federal Flood Control System Modification Program (Early Implementation Projects), administered by State of California, Department of Water Resources. Funding Recipient shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

B-12 TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Travel and per diem shall be reimbursed consistent with the rates current at the time of travel. These rates are published at <http://www.dpa.ca.gov/jobinfo/statetravel.shtm> or its successor website. For the purpose of computing such expenses, Funding Recipient's designated headquarters shall be: ***[insert Funding Recipient address]***. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

B-13 PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

B-14 STATE TO BE HELD HARMLESS: Funding Recipient agrees to indemnify State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the Project.

B-15 NO THIRD PARTY RIGHTS: The parties to this Funding Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Funding Agreement, or of any duty, covenant, obligation or undertaking established herein.

B-16 OPINIONS AND DETERMINATIONS: Where the terms of this Funding 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.

B-17 SUIT ON FUNDING AGREEMENT: Each of the parties hereto may sue and be sued with respect to this Funding Agreement.

B-18 REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding 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.

B-19 SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.

B-20 WAIVER OF RIGHTS: None of the provisions of this Funding 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 Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding 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.

B-21 TERMINATION FOR CAUSE: The State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in the manner herein provided included but not limited to reason of default under paragraph 20.

B-22 INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

B-23 CONFLICT OF INTEREST

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 Funding Recipient: Employees of the Funding Recipient 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, Cal. Gov't Code § 87100 *et seq.*

B-24 WORKERS' COMPENSATION: Funding Recipient affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Funding Agreement and will make its contractors and subcontractors aware of this provision.

B-25 AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State 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.

B-26 NONDISCRIMINATION CLAUSE: During the performance of this Funding Agreement, Funding Recipient and its subcontractors 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), 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. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

B-27 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 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:

1. The dangers of drug abuse in the workplace,
2. Funding Recipient's policy of maintaining a drug-free workplace,
3. Any available counseling, rehabilitation, and employee assistance programs, and
4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Funding Agreement:

1. Will receive a copy of Funding Recipient's drug-free policy statement, and
2. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

Suspension of Payments: This Funding Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

- a) Funding Recipient, its contractors, or subcontractors have made a false certification, or
- b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.

B-28 UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:

- a) No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
- b) Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
- c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

B-29 BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for the State-Federal Flood Control System Modification Program (Early Implementation Projects), this Funding 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 Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment

over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.

B-30 COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

B-31 DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.

B-32 RIGHTS IN DATA: Funding Recipient 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 Funding 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, Cal. Gov't Code §§ 6250 *et seq.* Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient 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.

B-33 DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than 30 days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$500 per item. Within 60 days of receipt of such inventory State

shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.

B-34 CHILD SUPPORT COMPLIANCE ACT: For any Funding Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:

a) The Funding Recipient 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 Funding Recipient, 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.

B-35 PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

B-36 DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this Funding Agreement, under penalty of perjury under the

laws of State of California, that Funding Recipient is in compliance with Public Contract Code section 10295.3.

B-37 FUNDING RECIPIENT NAME CHANGE: Approval of the State's Program Manager is required to change the Funding Recipient's name as listed on this Funding Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

B-38 AIR OR WATER POLLUTION VIOLATION: Under State laws, the Funding Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Exhibit C QUARTERLY WORK PLAN AND REPORT FORMATS

If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work the work plans and reports described in this Exhibit should include information regarding the scope of the Project-Associated Work. The Funding Recipient will clearly distinguish between work included in the Overall Work Plan, which will be funded by the State under this Funding Agreement, and Project-Associated Work, which will not be funded by the State under this Funding Agreement. **[Include if the Project involves an Associated Ecosystem Restoration Project: *The same is true for a Project that involves an Associated Ecosystem Restoration Project. The Overall Work Plan must provide information about the Ecosystem Project, as must the plans and reports described in this Exhibit.*]**

This Exhibit details the requirements for Quarterly Work Plans, Quarterly Progress Reports and Project Completion Reports.

QUARTERLY WORK PLANS

Quarterly Work Plans shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects contained in the State-Federal Flood Control System Modification Program (Early Implementation Program).

The report should reflect the work plan for completing work over the three months of the next calendar quarter.

QUARTERLY WORK PLAN

Describe the work to be performed during the time period covered by the Quarterly Work Plan including:

PROJECT INFORMATION

- Engineering and construction matters;
- Environmental matters;
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies;
- Major accomplishments planned for the quarter (i.e. tasks to be completed, milestones to be met, meetings to be held or attended, etc.);
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter;
- Describe differences between the work to be performed and the work outlined in the Overall Work Plan, including anticipated change orders;
- Any litigation, proceedings or claims relating to the Project.

COST INFORMATION

- Listing showing projected costs that are anticipated during the time period covered by the Quarterly Work Plan by the Funding Recipient and each contractor working on the project, broken down to show individual items and tasks.
- A discussion of how the projected costs compare to the project budget included in the Overall Work Plan;
- A list of any changes planned to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan;
- The amount of advance funds sought from the State pursuant to paragraph 14(c);
- The amount of funds the Funding Recipient intends to expend to meet its funding obligations under the Funding Agreement.

In the discussion of project Costs, eligible Real Estate Capital Outlay Costs will be listed separately from other Eligible Project Costs. If the Project has multiple Project Elements or Project Features, the Quarterly Work Plan should clearly indicate which costs will be incurred for each Project Element or Project Feature.

SCHEDULE INFORMATION

- A schedule of activities during the time period covered by the Quarterly Work Plan;
- A discussion on how the projected schedule compares to the original or last reported schedule; and
- A list of any changes anticipated during the time period covered by the Quarterly Work Plan as compared to the latest reported schedule.

QUARTERLY PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects contained in the State-Federal Flood Control System Modification Program (Early Implementation Projects).

The report should reflect the status of all of the projects identified in the Funding Agreement. A brief summary of program status should also be provided.

PROJECT STATUS

For each project, describe the work performed during the time period covered by the report including:

PROJECT INFORMATION

- Legal matters;
- Engineering and construction matters;
- Environmental matters;
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies;
- Major accomplishments during the quarter (i.e. tasks completed, milestones met, meetings held or attended, press releases, etc.);
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter;
- Describe differences between the work performed and the work outlined in the Overall Work Plan, including change orders;
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project.

COST INFORMATION

- Listing showing costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the project and which of these costs are Eligible Project Costs;
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan as well as the Quarterly Work Plans;
- A list of any changes approved to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan; and
- A discussion of whether there have been any changes to the Funding Recipient's Finance Plan for payment of the Funding Recipient's share of Eligible Project Costs.

In the discussion of Project Costs, eligible Real Estate Capital Outlay Costs will be listed separately from other Eligible Project Costs.

SCHEDULE INFORMATION

- A schedule showing actual progress verses planned progress;
- A discussion on how the actual schedule is progressing in comparison to the original or last reported schedule; and
- A list of any changes approved to the Schedule in accordance with Funding Agreement and a revised schedule, by task, if changed from latest reported schedule.

PROJECT COMPLETION REPORT

Project Completion Reports shall generally use the following format.

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of ten (10) pages summarizing project information (see report status section below for topics). The Executive Summary should include the following:

- Brief description of work proposed to be done in the original Early Implementation Grant application;
- Description of actual work completed and any deviations from the work plan identified in the Funding Agreement;

REPORTS AND/OR PRODUCTS

- Provide a copy of the final technical report;
- A map and shapefile(s) showing the location of the completed project, including latitude and longitude datum. (NAD'27 coordinates; UTM10 projection);
- Provide three electronic copies and three hard copies of as-built plans (media: CD-ROM; PDF format);
- Provide copies of any data collected along with location maps;

COST AND DISPOSITION OF FUNDS INFORMATION

- A list of and copies of all invoices showing:
 - The date each invoice was submitted to State;
 - The amount of the invoice;
 - The date the check was received; and
 - The amount of the check. (If a check has not been received for the final invoice, then state this in this section).
- A summary of the payments made by the Funding Recipient for meet its cost sharing obligations under this Funding Agreement.
- A summary of final funds disbursement including:
 - Labor cost of personnel of agency/ major consultant /sub-consultants. (Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc.);
 - Construction cost information, shown by material, equipment, labor costs, and change orders;
 - Any other incurred cost detail; and
 - A statement verifying separate accounting of funding disbursements.
- Summary of project cost including:
 - Accounting of the cost of project expenditure;

- Include all internal and external costs not previously disclosed;
- A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

In the discussion of project costs and disposition of funds, eligible Real Estate Capital Outlay Costs will be listed separately from other Eligible Project Costs. Costs for Project-Associated Work should also be listed separately.

ADDITIONAL INFORMATION

- A final project schedule showing actual progress verses planned progress;
- Certification by a California Registered Civil Engineer that the project was conducted in accordance with the approved work plan and any approved modifications thereto;
- Submittal schedule for Post Construction Performance Report and outline of the reporting format; and
- A copy of the application filed for a determination of eligibility for federal credits or reimbursement and all correspondence with the U.S. Army Corps of Engineers relating to that application and information regarding the status of that application.

Exhibit D
OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND
REHABILITATION AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
[insert name of funding recipient]
FOR
[Insert project name]

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board") and the **[name of Funding Recipient]** ("Funding Recipient") on this _____ day of _____, 20 **[enter execution year]** in view of the following circumstances:

1. The **[insert name]** Early Implementation Project ("Project") is a modification of a part of the State-Federal Flood Control System known as **[insert name]** which was authorized by Congress on **[insert date]**. *[If the project is a modification of the Sacramento River Flood Control Project, use this language: "The **[insert name]** Project ("Project") is a modification of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.];*
2. State funding had become available for the Project:
 - The voters of California approved Propositions IE and 84 on November 7, 2006, making available bond funds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources, has solicited applications for early implementation funding for its State-Federal Flood Control System Modifications Program.
 - The Funding Recipient applied for funding and has signed a Funding Agreement. This Funding agreement is between the State of California Department of Water Resources and the **[insert name of Funding Recipient]** for **[insert project name]** ("Funding Agreement").
 - The Funding Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by through the Board.
 - The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement under which the Board will oversee OMRR&R for the Project for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Project at this time, but in anticipation that federal funds may become available eventually:
 - The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("Corps"), and to enter into agreements necessary to obtain credit or reimbursement from the Corps.

- The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the Corps, the Department, and the Board that gives satisfactory assurances to the federal government the Department, and the Board that the required local cooperation will be furnished in connection with the Project.
4. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the Project under California Water Code Section 12642 which states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this OMRR&R Agreement that Funding Recipient will be responsible for OMRR&R of the Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages arising from construction or OMRR&R of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

“Board:” The State of California Central Valley Flood Protection Board or any successor thereto.

“Corps:” The United States Army Corps of Engineers.

“Department:” The State of California Department of Water Resources.

“Functional portion of the Project:” A completed portion of the Project to be constructed under the Overall Work Plan as determined by the Board to be suitable to operate and maintain in advance of completion of construction of the entire Project.

“Funding Agreement:” An agreement between the State of California Department of Water Resources and the [insert name of Funding Recipient] for [insert project name] dated _____.

“Funding Recipient:” A public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement and this OMRR&R Agreement.

“OMRR&R:” Operation, maintenance, repair, replacement, and rehabilitation of the Project.

“OMRR&R Agreement:” This agreement between the State of California Department of Water Resources and the [insert name of Funding Recipient] for OMRR&R of the [insert Project name].

“Overall Work Plan:” The plan described in the Funding Agreement in Paragraph 22(a), as amended, and Exhibit A-1, as amended.

“Post Construction Performance Reports:” The reports required by Funding Agreement Paragraph 22(e), as amended, and further described in Funding Agreement Exhibit C, as amended.

“Project:” The project described in the Overall Work Plan, but also including all of the federally and State authorized flood facilities within the Funding Recipient's boundaries.

“Project Completion Report:” The report required by Funding Agreement Paragraph 22(d), as amended, and further described in Funding Agreement Exhibit C, as amended.

“Project Site:” The location of the Project.

“State:” The State of California, acting by and through the Board.

“State Plan of Flood Control:” The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

SECTION I: Obligations of the Funding Recipient

A. General Obligations. The Funding Recipient agrees to this following:

1. To perform OMRR&R for the Project, including all mitigation features of the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Funding Recipient to perform OMRR&R for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
2. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages, including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the Project.
3. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns free and harmless from any and all claims or damages arising out of or in connection with the obligations herein assumed by the Funding Recipient, including any responsibility for claims or damages arising out of work performed by the State on the Project for which the State may be held liable and any claims based upon inverse condemnation.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Funding Recipient hereby accepts responsibility for the completed Project or functional portion thereof. The Funding Recipient will develop an Interim Standard Operation and Maintenance Manual for the Project as required by the Funding Agreement. The Funding Recipient agrees that it will be responsible for OMRR&R of the completed Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Project. The Funding Recipient acknowledges that changes to the Interim Standard Operation and Maintenance Manual may be made by the State and the Corps before the document becomes final and that the Funding Recipient shall be responsible for OMRR&R in accordance with any revised version of the Operation and Maintenance Manual for the Project or any Supplement to the Operation and Maintenance Manual.
2. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access

to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.

3. If the Funding Recipient has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

If the Funding Recipient has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of law, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of that functional portion of the Project to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a work plan and present it to the Funding Recipient with instructions that if the Funding Recipient does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

C. Additional Obligations:

1. The Funding Recipient shall annually update the Interim Operation and Maintenance Manual for the Project prepared pursuant to the Funding Agreement.
2. The Funding Recipient shall annually update the safety plan for the Project prepared pursuant to the Funding Agreement. The Funding Recipient agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.
3. The Funding Recipient shall provide reports to the Board as follows: (1) The Funding Recipient shall provide copies to the Board of the Project Completion Report and Project Construction Performance Reports prepared pursuant to the Funding Agreement; and (2) If requested to do so by the Board, the Funding Recipient shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Wolk), 2007 Cal. Stat. 366 (to be codified at Cal. Water Code § 9140(a)) that pertain to the Project. The Board may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities under this OMRR&R Agreement.

SECTION II: Hazardous Substances

The Funding Recipient acknowledges State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code §§ 25310 *et seq.* or other statutes or regulations (collectively referred to as "state and federal Hazardous Substances Laws") on lands necessary for Project construction and OMRR&R to the extent the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. The Funding Recipient agrees:

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.

- F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

The Funding Recipient may delegate or subcontract its responsibilities under this OMRR&R Agreement. In performing the obligations called for in this OMRR&R Agreement, the Funding Recipient shall notify the State when it initially retains, employs, or uses any agencies or firms. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Funding Recipient; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

SECTION IV: Procedures for Reimbursing the State

To the extent Funding Recipient fails to fulfill its obligations under this Agreement, the State may perform such obligations and bill Funding Recipient accordingly. In such circumstances, the State shall provide an invoice to the Funding Recipient for the costs of performing the work. Funding Recipient agrees to reimburse the State by promptly paying any such invoices within thirty days.

SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R 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 all parties.

SECTION VI: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this project, it may be necessary to amend this OMRR&R Agreement as required by the U.S. Army Corps of Engineers. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the [Funding Recipient]:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

If to the Board:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement.

SECTION X: Authority

The Funding Recipient has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

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

The Central Valley Flood Protection Board

[Funding Recipient]

By _____
(Name)
(Title)

By _____
(Name)
(Title)

Date: _____

Date: _____

Approved as to Legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

(Name)
(Title)

(Name)
(Title)

Exhibit D-1

STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R 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 Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **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 OMRR&R 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 OMRR&R Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R 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.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R 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.

11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. WAIVER OF RIGHTS: None of the provisions of this OMRR&R 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 OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R 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.
13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default under paragraph 20 of the Funding Agreement.
14. INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. CONFLICT OF INTEREST
 - 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 Funding Recipient: Employees of the Funding Recipient 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, Cal. Gov't Code § 87100 *et seq.*
16. WORKERS' COMPENSATION: Funding Recipient affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Funding Recipient assures State 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.

18. **NONDISCRIMINATION CLAUSE:** During the performance of this OMRR&R Agreement, Funding Recipient and its subcontractors 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), 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. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this OMRR&R Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 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:

1. The dangers of drug abuse in the workplace,
2. Funding Recipient's policy of maintaining a drug-free workplace,
3. Any available counseling, rehabilitation, and employee assistance programs, and
4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:

1. Will receive a copy of Funding Recipient's drug-free policy statement, and
2. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

Suspension of Payments: This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

a) Funding Recipient, its contractors, or subcontractors have made a false certification, or

- b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.
20. UNION ORGANIZING: Funding Recipient, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Funding Recipient, by signing this OMRR&R Agreement, hereby certifies that:
- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
 - b) Funding Recipient shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
 - c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State. RIGHTS IN DATA: Funding Recipient 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 OMRR&R Agreement shall be in the public domain. Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient 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.
23. CHILD SUPPORT COMPLIANCE ACT: For any OMRR&R Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:
- a) The Funding Recipient 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 Funding Recipient, 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.
24. PRIORITY HIRING CONSIDERATIONS: If this OMRR&R Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the OMRR&R Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code § 10353.

25. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this OMRR&R Agreement, under penalty of perjury under the laws of State of California that Funding Recipient is in compliance with Public Contract Code section 10295.3
26. FUNDING RECIPIENT NAME CHANGE: Approval of the State's Project Manager is required to change the Funding Recipient's name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
27. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Funding Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Exhibit D-2: Draft Resolution

Resolution No. _____

Resolved by the _____
(Governing body, city council, or other)

of the _____
(Funding Recipient-agency, city, county, or other)

that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to

_____ *(Agency, city, county, or other)*

by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: _____
(Project title)

have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires

_____ *(Agency, city, county, or other)*

to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of _____
(Project title)

Therefore, the _____
(Presiding officer, president, city manager, or other official)

of the _____ is hereby authorized and directed to
(Agency, city, county, or other)

sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the _____
(Board of Directors, Supervisors, etc.)

of the _____
(Name of Funding Recipient)

on _____
(Date)



Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Exhibit F LAND ACQUISITION PROCESS REQUIREMENTS

- 1) **GEODETIC STANDARDS:** Funding Recipient shall provide geodetic services as described in this Exhibit F. Geodetic services are defined as field surveys, examination of title to all parcels, preparation of legal descriptions, maps and deeds including obtaining preliminary title reports, or litigation guarantees, clearance of exceptions to title, policy of title insurance.

Funding Recipient shall acquire and assume title of the real property rights in Funding Recipient's name for all parcels authorized in accordance with the approved Project Real Estate Plan using Easement Acquisition Deed or Grant Deed, a sample of such to be provided. After completion of all Project acquisitions, and in concurrence with State, Funding Recipient will subsequently assign to State, in the name of The Sacramento and San Joaquin Drainage District or successor entity, all real property interests using Easement Assignment Deed or Grant Deed, a sample of such to be provided.

Funding Recipient shall adhere and conform to all conditions stated in the Funding Agreement, cadastral surveys guidelines, standards, and requirements for legal descriptions and mapping.

Funding Recipient shall assure that property vested by Funding Recipient, and subsequently assigned to State, is free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes, except:

- Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
- Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
- Easements or rights of way over said land for public or quasi-public utility or public purposes not in conflict with the Project, if any.

State shall provide Funding Recipient with copies of the geodetic branch-cadastral surveys guidelines, standards, and requirements for legal descriptions and mapping upon request.

State shall verify Funding Recipient's adherence to geodetic standards during the review process and provide approval or rejection to Funding Recipient in writing.

- 2) **APPRAISAL STANDARDS:** An appraisal estimates the fair market value of the real property acquired. All appraisals shall be performed by an appraiser who is licensed with the State of California, Office of Real Estate Appraisers and who also holds the designation of MAI or a recognized equivalent applicable to the type of property appraised. An appraisal of the current fair market value as defined in Code of Civil Procedure Section 1263.320 must be developed as required by the Uniform Standards of Professional Practice Standard 1: Real Property Appraisal Development, and reported as a Self-Contained Appraisal Report under USPAP Standard 2: Real Property Appraisal Reporting. Appraisal Standards shall be those contained in the most recent edition of The Appraisal of Real Property, which is published by the Appraisal Institute. Three copies of each appraisal report shall be submitted to the State for approval, including, if necessary, the Department of General Services.

Appraisals reports with just compensation values up to \$150,000 will be reviewed and approved by State. For acquisitions where the individual appraisal report's just compensation value exceeds \$150,000, the appraisal will require review and approval from the Department of General

Services. State shall provide Funding Recipient with Appraisal Standards and Specifications and Department of General Services Appraisal Review Specifications upon request.

State shall verify Funding Recipient's adherence to Appraisal Standards and Specifications during the appraisal review process and provide approval or rejection to Funding Recipient in writing. For lands, easements, or rights of way acquired by eminent domain proceeding instituted in accordance with this Funding Agreement, fair market value shall be either: (a) the amount of the court award for the real property interests taken, to the extent the Funding Recipient, after coordination with State, determined such interests are required for construction or OMRR&R, or (b) the amount of any stipulated settlement or portion thereof that the State approves in writing.

- 3) **ENVIRONMENTAL SITE ASSESSMENT STANDARDS:** During the due diligence period and before final acquisition, Funding Recipient shall perform and/or comply with the following provisions to determine the presence or existence of hazardous substances/ toxic materials and cultural/historic resources:

Funding Recipient shall comply with State's, Water Resources Engineering Memorandum No. 59 (WREM 59), which establishes a policy for pre-acquisition inspection of real property and improvements where the State is anticipating to be conveyed, by assignment, a real property interest, fee or easements, for ascertaining the existence of hazardous substances. At a minimum for all fee purchases and all levee right of way, Funding Recipient shall conduct a Phase I Environmental Site Assessment (ESA) and prepare a written report in conformance with the scope and limitations of the American Society for Testing and Materials (ASTM) E1527-05 standard practice and the requirements set forth in Title 40, Part 312 of the Code of Federal Regulations (CFR). The contents of the Phase I ESA report shall be based on information from the following, but not limited to the following activities: a site reconnaissance, historical review of land use, review of land title records, consultation with local environmental health officials, contact with the land owner, review of available maps and records, review of cultural resource databases, and review of federal and State environmental databases.

The Funding Recipient will obtain necessary permits from the current landowners to allow inspection of the property. In the event that the Funding Recipient discovers through an environmental investigation, such as a Phase I ESA or other means prior to or after close of escrow that any Project lands contain hazardous substances or toxic materials, the Funding Recipient shall either forgo the purchase of the property or initiate and complete any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Account Act or other applicable law and sustain all costs accordingly. Any required remediation plan shall be approved by the State before the State advances any funds into escrow under paragraph 21 (b) of this Agreement. The Funding Recipient shall be considered the Project proponent, bona fide prospective purchaser, operator, and/or landowner for purposes of CERCLA, RCRA, Hazardous Substances Account Act, other applicable law and WREM 59 liability.

Funding Recipient shall acquire the real property rights free and clear of all known encumbrances and hazardous substances based on, when reasonably necessary, the analytical laboratory results of composite sediment and soil samples. Funding Recipient shall determine and have reviewed and approved by the agencies with regulatory jurisdiction the proper disposition of identified encumbrances to title.

If the areas of acquisition are to be used as borrow sites, Funding Recipient shall determine that the soil found in these areas is suitable as fill material in accordance with guidelines found in the California Environmental Protection Agency, Department of Toxic Substances Control document entitled "Information Advisory — Clean Imported Fill Material" dated October 2001.

State shall provide Funding Recipient with Environmental Site Assessment Standards and Guidelines upon request.

State shall verify Funding Recipient's adherence to Environmental Site Assessment Standards during the review process and provide approval or rejection to Funding Recipient in writing.

- 4) **WRITTEN OFFER:** Purchase documents, known collectively as the first written offer, is comprised of a cover letter to the property owner, a right of way contract (purchase funding agreement), a sample of such to be provided upon request, including an appraisal summary statement of the appraisal's fair market value and geodetic materials (map and deed). The offer package shall also include information on Relocations Assistance Program if it is applicable.

Prior to Funding Recipient making a first written offer to landowners, Funding Recipient shall provide State for review and approval purposes, the subject property's right of way contract (purchase funding agreement), appraisal report, geodetic materials (map and deed), and environmental site assessment report. State's review shall be accomplished and the results reported to Funding Recipient promptly following receipt of those documents.

Funding Recipient's geodetic materials (map and deed) shall be reviewed by State for compliance to the Early Implementation Projects, Cadastral Surveys Guidelines, and requirements for legal descriptions and mapping.

Funding Recipient's environmental site assessment report will be reviewed for compliance to a Phase I Environmental Site Assessment (ESA) and prepare a written report in conformance with the scope and limitations of the American Society for Testing and Materials (ASTM) E1527-05 standard practice and the requirements set forth in Title 40, Part 312 of the Code of Federal Regulations (CFR). This standard is in accordance with the State's Water Resources Memorandum No. 59 (WREM 59), which establishes a policy for pre-acquisition inspection of real property and improvements where the State is anticipating to be conveyed, by assignment, a real property interest, fee or easements, for ascertaining the existence of hazardous substances.

Funding Recipient is at risk of not receiving cost-sharing for land acquisition activities made before receiving State's approvals as detailed in Sections 1) Geodetic Standards, 2.) Appraisal Standards, and 3.) Environmental Site Assessment Standards, of this Exhibit F.

- 5) **NEGOTIATIONS:** Funding Recipient's negotiator is responsible to ensure that the property owner is paid the just compensation that they are entitled, that the settlement represents compensation that is just and fair, and that every courtesy and consideration is extended to the property owner. If during the course of negotiations, the negotiator discovers anything affecting the value for the property that may have escaped the appraiser's attention or was not given proper consideration in the final determination of market value, he must investigate and, if necessary, call for a reappraisal of the property before negotiations are continued.

Parcel diaries for each ownership must be maintained. The parcel diary will reflect the offer and status of the agent's contracts and conversations with all interested parties. It will remain with the agent individual parcel folder until the parcel is acquired. It will then be included in the memorandum of settlement package.

Private property or interest therein will be acquired in accordance with Article I, Section 19 of the California Constitution. In addition to the constitutional requirement, acquisition of private property for public use is also to be in accordance with sections of the Government Code entitled "Uniform Relocation Assistance and Real Property Acquisitions Policies Act."

Negotiated settlement, situations where final just compensation is to be paid to a property owner, must be approved by State in writing prior to close of escrow. Property may be acquired through negotiated settlement at a payment which varies from the approved appraisal through the negotiated settlement process. If the negotiated settlement is non-substantial and can be justified through the appraisal process, it may be authorized by State's Real Estate Branch. Negotiated

settlements of a substantial amount or those that can not be justified through the appraisal process, will require prior approval by State's Program Management personnel in concurrence with the State's Real Estate Branch, Chief.

Funding Recipient is at risk of not receiving cost-sharing for offers made that are in excess of the approved appraisal's fair market value without receiving the State's approvals as detailed in Sections 1) Geodetic Standards, 2.) Appraisal Standards, and 3.) Environmental Site Assessment Standards, of this Exhibit F.

- 6) **MEMORANDUM OF SETTLEMENT:** Before the close of escrow for any parcel, Funding Recipient shall provide State a memorandum of settlement package (MOS), a sample of such to be provided. State will review and approve each transaction before the close of escrow. The settlement package shall include a copy of the original signed and notarized deed on deposit in the escrow account, two signed copies of the Right of Way Contract each with original signature(s), a "Memorandum of Settlement, Escrow and Closing Instruction Worksheet" which gives instructions for clearing title at close of escrow, escrow closure notice, escrow and closing cover letter, and a copy of the parcel diary.

The final settlement will be given careful consideration to compensation of appraised fair market value, compliance with existing policy on title exceptions, and adequacy of the property acquired as it relates to the Project Real Estate Plan.

Where the amount proposed to be paid by the Funding Recipient for the real property interest exceeds the amount determined pursuant to Section 2), Appraisal Standards, of this Exhibit F, also referred to as a "Negotiated Settlement" as described in Section 5), Negotiations, of this Exhibit F, the State, at the request of the Funding Recipient, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Funding Recipient, may approve an amount greater than the amount determined pursuant to Section 2) Appraisal Standards, of this Exhibit F. Funding Recipient will provide a detailed settlement explanation of any negotiated settlements.

Transactions with a just compensation value up to \$150,000 will be reviewed and approved by State. In cases where the individual transaction's just compensation value exceeds \$150,000, the appraisal will require review and approval from the Department of General Services.

Funding Recipient is at risk of not receiving cost-sharing for settlements made that are in excess of the approved appraisal's fair market value without receiving the State's written approvals as detailed in Sections 1) Geodetic Standards, 2.) Appraisal Standards, and 3.) Environmental Site Assessment Standards, of this Exhibit F, and State's Transaction Review Approval in writing prior to close of escrow.

- 7) **ESCROW AND CLOSING:** Escrow and closing services are required to consummate the transactions which are called for in the Funding Agreement including funding, clearing title at close of escrow, and issuance of a policy of title insurance.

Funding Recipient shall establish individual escrows (Escrow) to consummate the transactions which are authorized in Funding Recipient's Project Real Estate Plan and have received all State approvals.

In concurrence with State, Funding Recipient will select an escrow holder of its choice to facilitate escrow. Escrow holder shall be instructed by State as to funding, clearing title at close of escrow, and issuance of a policy of title insurance.

Funding Recipient's escrow holder shall close escrow in accordance with previously approved "Escrow and Closing Instruction Worksheet" outlined in Section.6), Memorandum of Settlement,

of this Exhibit F, which gives instructions for the proper disposition of identified encumbrances to title and the escrow closure notice.

Funding Recipient is solely responsible for providing funding for its share of Eligible Project Costs into escrow.

Funds advanced by State for purchase of real property essential for completion of the Project shall be deposited by State with escrow holder. If the escrow does not close by the date set forth in State's escrow instructions, or such other date as may be agreed to by the parties, the funds provided by State shall be returned to State.

Closing shall be accomplished through the Escrow upon which the deed will be recorded in the official public records of the county in which the real property is located. Title shall be conveyed to Funding Recipient at close of escrow.

The costs of using an escrow agent will be paid by the Funding Recipient, but will be considered Eligible Project Costs for purposes of this Funding Agreement and hence subject to state cost sharing requirements.

After completion of all Project acquisitions, and in concurrence with State, Funding Recipient will subsequently assign to State, in the name of "The Sacramento and San Joaquin Drainage District, or successor entity" all real property interests using Easement Assignment Deed or Grant Deed, a sample of such to be provided.

- 8) **LAND ACQUISITION FINAL ACCOUNTING PROCESS:** At the conclusion of the Project or any Project Elements, Funding Recipient shall prepare and provide State with a land acquisition final accounting package as described below. The land acquisition final accounting package serves multiple purposes for the State, including allowing tracking of parcels, ensuring only eligible project costs are paid, facilitating legally required accounting and audit functions, and maximizing the State's ability to obtain crediting towards future possible federal cost shares. Accordingly, strict adherence to preparation of the land acquisition final accounting package is required.

As detailed in paragraph 21(a) of the Funding Agreement, Funding Recipient will submit to State a Project Real Estate Plan, to establish acceptable Project Real Estate requirements. Depending upon the disbursement approach selected by Funding Recipient in paragraph 21(b) of the Funding Agreement, State may provide Funding Recipient advanced funds to be counted toward the State cost share of total Project costs for approved acquisitions of necessary Project lands, easements, and rights-of-way. Payment to Funding Recipient for any lands, easements, or rights of way purchased, and relocations made prior to execution of the Agreement, and/or prior to final determination by State of the extent of necessary real estate requirements for the Project, is subject to adjustment during the final accounting of costs shared between State and Funding Recipient.

Where the amount proposed to be paid by the Funding Recipient for the real property interest exceeds the amount determined pursuant to Section 2) Appraisal Standards, of this Exhibit F, also referred to as a negotiated settlement as described in Section 5) Negotiations, of this Exhibit F, the State, at the request of the Funding Recipient, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Funding Recipient, may approve an amount greater than the amount determined pursuant to Section 2) Appraisal Standards, of Exhibit F to the Funding Agreement. Funding Recipient will provide a detailed settlement explanation of any negotiated settlements.

Funding Recipient shall submit for State's approval a land acquisition final accounting package, a sample of such to be provided upon request. The land acquisition final accounting package will serve as the final review and approval of Funding Recipient's authorized land acquisition costs,

which may be applied towards Eligible Project Costs. A land acquisition final accounting package will be provided for each individual real property acquisition necessary for the project construction. Land acquisition final accounting packages will conform to State's format and will include all documents requested by State.

Land acquisition final accounting package will include: Binder Coversheet and Spine format; Exhibit A, Funding Recipient Parcel No., Central Valley Flood Protection Board Parcel No., APN, Property Owner, Acreage per Project Real Estate Plan, Acreage Acquired; Exhibit B, acquisition breakdown of capital outlay costs; Authorization Letters (Authorization of Project Real Estate Plan Letter, Land Acquisition Standards Approval Form, Memorandum of Settlement Approval Form); Checklist including acreage variance; Right of Way Contract (Purchase Agreement); Appraisal; Acquisition deed; Acquisition maps; Utility Relocation Agreements, if applicable; Preliminary Title Report; Policy of Title Insurance; Escrow and Closing Settlement Statement; and Memorandum of Settlement Statement. The final land acquisition accounting package shall include a certification by the Recipient's Program Manager that all costs and records are true and correct.