

**Meeting of the Central Valley Flood Protection Board
February 24, 2017**

**Staff Report
Deferred Maintenance Project
Local Maintaining Agency Operation and Maintenance Agreements**

1.0 – ITEM

Consider approval of the attached Resolution 2017-4 to approve the Operation and Maintenance Agreement template, and to delegate authority to the CVFPB Executive Officer to execute such Operation and Maintenance agreements negotiated by the CVFPB and the Department of Water Resources (DWR) legal staff.

2.0 – PROJECT PROPONENT

Department of Water Resources
Flood Maintenance Office
3310 El Camino Ave.
Suite 140
Sacramento, CA 95821-9000
(916) 574-1404

3.0 – PROJECT LOCATION

Project levees within the California Central Valley that are part of the State Plan of Flood Control (SPFC).

4.0 – PROJECT DESCRIPTION

4.1 – Background

The 2012 Central Valley Flood Protection Plan proposed a State Systemwide Investment Approach for sustainable, integrated flood management to be implemented over the next 15 years. As one of the near-term priority actions, DWR developed the Deferred Maintenance Project (DMP) and secured funding to evaluate and repair levee penetrations. Through the DMP, DWR will assist Local Maintaining Agencies (LMAs) in reducing flood risks by providing technical and financial support for inspection and corrective action (repair, replacement, rehabilitation, and abandonment) of drainage and

discharge pipes which are features of the SPFC. DWR will perform the work for facilities in State-maintained areas and Maintenance Areas.

An overview of the DMP was previously presented to the CVFPB on August 26, 2016 by Mr. Mark List, DWR Maintenance Support Branch Chief of the Flood Maintenance Office. The informational briefing discussed the DMP purpose, goals, schedule, funding, prioritization, and implementation.

4.2 – Project Funding

The DMP is funded from Control Section 6.10 of the Budget Act of 2016. Up to \$90 million is authorized under the General Fund with two years to commit/expend, and one year to liquidate funding. DMP pipe inspection and corrective action projects are fully funded through site eligibility and selection processes and a directed funding agreement with applicable LMAs. As a condition of funding as stated in the Project Agreement, LMAs will be required to sign a new Operation and Maintenance Agreement for the implemented project to ensure adequate maintenance and corrective actions can be addressed at a local level.

4.3 – Project Scope

DMP will provide 100% State cost share to LMAs and State Maintaining Agencies to repair SPFC drainage and discharge pipe facilities that have been screened and prioritized based on hazard level, including the following actions:

- Video inspection in accordance with US Army Corps of Engineers criteria to assess pipe conditions
- Replacement of damaged pipes
- Repair or rehabilitation (e.g. slip-lining) of pipes in otherwise adequate condition to extend the engineered life of the facility
- Proper abandonment or removal of pipes that no longer serve a useful flood protection system purpose
- Abandonment or removal of improperly abandoned pipes

DWR works with each LMA to identify eligible repairs and establish a project agreement that will define the roles and responsibilities for each party and define the scope of work that LMA will take on for all eligible pipe penetrations within the given LMA. Eligible costs for the video inspection and assessment, engineering, permitting, and construction will be provided by DWR to each LMA through project agreements to achieve maximum flood risk reduction benefits and address long standing deferred maintenance issues.

For repairs to facilities maintained by an LMA, it is anticipated that the LMA will prepare the design and perform the repair with DWR oversight. DWR will perform repair/replacement/rehabilitation/abandonment for facilities in State-maintained areas, Maintenance Areas, and LMAs who are unable to take on the task but are willing to sign a new Operation and Maintenance Agreement for the implemented project.

5.0 – OPERATION AND MAINTENANCE AGREEMENTS

For each of the repair projects, an Operation and Maintenance Agreement between the CVFPB and the LMA is required. The Operation and Maintenance Agreement establishes assurances by the LMA to the CVFPB that the LMA will perform operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the SPFC facilities after the repairs.

A draft template has been prepared based on such agreements for repair projects implemented by the State or the LMAs.

6.0 – CEQA ANALYSIS

The execution of the Operation and Maintenance Agreements does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and thus is not a 'project' for purposes of the California Environmental Quality Act (Public Res. Code § 21065; Guidelines § 15378(a)).

LMAs will be responsible for obtaining all permits, including CVFPB encroachment permits, ensuring compliance with CEQA as lead agency, and fulfilling all requirements as stated in the overall Project Agreement (shown in Attachment C for reference only) in order to be eligible for funding.

7.0 – DWR COMMENTS

DWR is authorized and funded by the State of California to carry out levee repairs in the facilities of the SPFC. As one of the near-term priority actions, DWR has developed DMP to assist LMAs in reducing flood risks by providing technical and financial support for inspection and corrective action of drainage and discharge pipes which are features of the SPFC. The proposed Operation and Maintenance Agreement will allow DWR to execute the project agreements with LMAs to implements flood risk reduction projects.

8.0 – STAFF ANALYSIS AND RECOMMENDATION

The DMP is a beneficial program to address aging levee penetrations in the SPFC. An important element of the overall health of the SPFC is not only the acute fix in the near term, but the long term operations and maintenance of the facilities. Many of the pipes addressed under the DMP are system features without clearly defined O&M responsibilities between the State and LMAs, and therefore have only minimally been inspected and maintained. DWR recognizes this deficiency and seeks to correct it within the scope of the DMP; and CVFPB staff recognizes the value in clarifying the roles and responsibilities of each party. Ultimately, this is a helpful tool in reducing the State's liability for loss due to failures of pipe penetrations through SPFC levees. Also, in addition to the O&M agreements CVFPB Staff will be requiring permits for the proposed improvements in order to track and assign additional conditions to each improved pipe.

Therefore, staff recommends that the board adopt Resolution No. 2017-4,

1. Approve the Operation and Maintenance Agreement template
2. Delegate authority to the Executive Officer to sign the Operation and Maintenance Agreements.

9.0 – LIST OF ATTACHMENTS

- A. A template of the Project Agreement, attachment D – Operation and Maintenance Agreement
- B. Resolution 2017-4
- C. DWR Project Agreement (for reference only)

Prepared by: Vincent Rodriguez, PE, Senior Engineer, DWR
Preston Shopbell, PE, Senior Engineer, CVFPB

Environmental Review: Ruth Darling, Senior Environmental Scientist

Document Review: Mitra Emami, PE, Acting Chief Engineer

Legal Review: Kanwarjit Dua, Board Counsel

Agreement [Insert #]
[Insert name of Funding Recipient]

Exhibit D
OPERATION AND MAINTENANCE AGREEMENT

BETWEEN
The Central Valley Flood Protection Board
AND
[Funding Recipient]
FOR
[Funded Project Name]

This Operation and Maintenance 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 [Funding Recipient] ("Funding Recipient") on this [] day of [], 20[] .

RECITALS

WHEREAS: The [Project Name from Project Agreement] ("Project") is a project funded in part by the Deferred Maintenance Project and is a [choose one: modification, repair] of a part of the State-Federal Flood Control System known as [

for projects in the San Joaquin River Basin using the following description: The Lower San Joaquin River and Tributaries Flood Control Project which was authorized by Congress on December 22, 1944 as part of Public Law 534 and was approved by the California Legislature in 1946 (Section 12651 of the State Water Code).

for Projects in the Sacramento River Basin use the following description: 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.]

WHEREAS: The Legislature of the State of California approved Control Section 6.10 of the Budget Act of 2016 making available funds for pipe repairs [feel free to insert a more apt description of the DMP;

- The State, acting by and through the Department of Water Resources, has solicited applications for funding for the Deferred Maintenance Project ("DMP").
- The Funding Recipient has signed a Project Agreement dated []. This Project Agreement is between the State of California Department of Water Resources and [Funding Recipient] for [Project Name] ("Project Agreement").
- The Project Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) OMRR&R of the Project(s) (as defined therein).
- The Department has agreed to enter into the Project 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, as defined herein, for the State, as part of the State Plan of Flood Control.

Agreement [Insert #]
[Insert name of Funding Recipient]

WHEREAS, Funding Recipient acknowledges its obligation 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.

WHEREAS, Pursuant to this agreement, Funding Recipient provides the Board with the assurances that it 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" means the State of California Central Valley Flood Protection Board or any successor thereto.

"Department" means the State of California Department of Water Resources.

"Functional portion of the Project" means 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 Recipient" means [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 Project Agreement and this OMRR&R Agreement.

"Interim Standard Operation and Maintenance Manual" means the interim operation and maintenance manual to be produced by Funding Recipient if required by the Project Agreement.

"OMRR&R" means operation, maintenance, repair, replacement, and rehabilitation of the Project.

"OMRR&R Agreement" means this agreement between the Board and the [Insert name of Funding Recipient] for OMRR&R of the Project.

"Overall Work Plan" means the plan described in the Project Agreement in Paragraph 23(a) and Exhibit A-1.

"Post Construction Performance Reports" means the report(s) required by Project Agreement in Paragraph 23(e) and further described in Project Agreement Exhibit C.

"Project" means the Funded Project as described in the Overall Work Plan attached to the certain Project Agreement, together with any functional portion of the Project

"Project Agreement" means that certain agreement between the Department and the [Funding Recipient] for [Project Name] dated [insert date].

"Project Completion Report" means the report required by Project Agreement Paragraph 22(d) and further described in Project Agreement Exhibit G.

"Project Site" means the location of the Project.

"State" means the State of California, acting by and through the Board.

Agreement [Insert #]
[Insert name of Funding Recipient]

“State Plan of Flood Control” means 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 the following:

1. The Funding Recipient hereby accepts responsibility for the Project.
2. 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.
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.
4. 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 do any or all of the following: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability 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 reasonable and 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, and 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.

5. The Funding Recipient hereby gives the State the right to enter, at reasonable times and in a reasonable manner, upon the 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) to perform any work required under other Sections of this Agreement on 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 the 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

Agreement [Insert #]
[Insert name of Funding Recipient]

grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.

B. Specific Obligations Arising as a Result of the Project

1. If the Project Agreement requires the Funding Recipient to develop an Interim Standard Operation and Maintenance Manual, Funding Recipient shall:
 - (a) develop an Interim Standard Operation and Maintenance Manual as so required; and
 - (b) be responsible for OMRR&R of the Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Project and any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Project and (2) shall annually update the Interim Operation and Maintenance Manual for the Project prepared pursuant to the Project Agreement. The Funding Recipient acknowledges that changes to the Interim Standard Operation and Maintenance Manual may be made by the State and the USACE before the document becomes final and that the Funding Recipient shall be responsible for Operations, Maintenance, Repair, Replacement and Rehabilitation 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. If the Project Agreement requires the Funding Recipient to develop a Safety Plan, Funding Recipient shall:
 - (a) develop a Safety Plan as so required;
 - (b) annually update the safety plan for the Project prepared pursuant to the Project Agreement; and
 - (c) 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 Post Construction Performance Reports prepared pursuant to the Project 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 California 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, California 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.

Agreement [Insert #]
[Insert name of Funding Recipient]

- 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 and cooperate 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 Section II 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 delegates a majority of its obligations under this Agreement by retaining, employing, or using any agencies or firms. The Funding Recipient shall continue to be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to request that any services for this OMRR&R Agreement provided to Funding Recipient by any subcontractor be terminated if its performance is

Agreement [Insert #]
[Insert name of Funding Recipient]

unsatisfactory and, upon receipt of such request, Funding Recipient shall promptly terminate the applicable contract(s).

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, as provided in Section I A. 4., 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 USACE. 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 [Funding Recipient]:

[Name & title]
[Street Address]
[City/Town, CA Zip Code]

If to the Board:

Ms. Leslie Gallagher
Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 170
Sacramento, CA 95821

Agreement *[Insert #]*
[Insert name of Funding Recipient]

With a copy to:

Mr. David J. W. Wheeldon
DMP Program Manager
Department of Water Resources
P. O. Box 219000
Sacramento, CA 95821-9000

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 D-1 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 D-2 to this OMRR&R Agreement.

(Remainder of page intentionally left blank)

Agreement *[Insert #]*
[Insert name of Funding Recipient]

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

**Central Valley
Flood Protection Board**

[Funding Recipient]

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Approved as to Legal Form
And Sufficiency

Approved as to Legal Form
And Sufficiency

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Agreement [Insert #]
[Insert name of Funding Recipient]

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. 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.
7. 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.
8. SUIT ON OMRR&R AGREEMENT: Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
9. 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.
10. 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.
11. 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.
12. 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 21 of the Project Agreement.

Agreement [Insert #]
[Insert name of Funding Recipient]

13. 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.

14. 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.*
- d) Employees of and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

Agreement [Insert #]
[Insert name of Funding Recipient]

Exhibit D-2: RESOLUTION ACCEPTING STANDARD CONDITIONS TEMPLATE

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 Control Section 6.10 of the Budget Act of 2016, 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 E RESOLUTION ACCEPTING FUNDS TEMPLATE

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 Control Section 6.10 of the Budget Act of 2016, that the funds awarded to

_____ by the California Department of
(Agency, city, county, or other)

Water Resources for a State-Federal Flood Control System Modification Program project titled:
_____ are hereby accepted.
(Project title)

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

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

sign a Project Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement.

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 _____

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION No. 2017-4

DEFERRED MAINTENANCE PROJECT
OPERATION AND MAINTENANCE AGREEMENTS

WHEREAS, The 2012 Central Valley Flood Protection Plan (CVFPP) proposed a State System-wide Investment Approach for sustainable, integrated flood management to be implemented over the next 15 years.

WHEREAS, As one of the near-term priority actions, the Department of Water Resources (DWR) has developed the Deferred Maintenance Project (DMP) to assist local maintaining agencies (LMAs) in reducing flood risks by providing technical and financial support for inspection and corrective action (repair, replacement, rehabilitation, and abandonment) of drainage and discharge pipes which are features of the State Plan of Flood Control.

WHEREAS, The Lower San Joaquin River and Tributaries Flood Control Project, which was authorized by Congress on December 22, 1944 as part of Public Law 534 and was approved by the California Legislature in 1946 (Section 12651 of the State Water Code), and 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, for which, the State of California has provided assurance to the federal government.

WHEREAS, DWR has developed DMP procedures that require the participating LMAs to provide operation and maintenance assurances to the State for the repair projects.

WHEREAS, DWR has developed the templates for the Operation and Maintenance Agreement as an attachment to the project funding agreement, and

WHEREAS, the Central Valley Flood Protection Board (CVFPB) seeks to limit liability with respect to the State Plan of Flood Control.

NOW, THEREFORE, BE IT RESOLVED that the CVFPB acting in its capacity as assurance provider to the federal government:

1. Approves Operation and maintenance agreement template,
2. Delegates the authority to the Executive Officer to sign operation and maintenance agreements funded under the DMP

Dated: _____

By _____
William H. (Bill) Edgar
President

By _____
Jane Dolan
Secretary

Approved as to Legal Form and Sufficiency

Kanwarjit Dua
Board Counsel

Dated: _____

Agreement [insert #]
[Funding Recipient's Name]

[Note to Preparer:

This Template is to be used for the development of a **DMP Project Agreement**. This Project Agreement Template should be used for DMP Projects only, and should be accompanied by the associated DMP Project Agreement Exhibits.

This template contains notes in blue text and required inserts and optional contract clauses in red text. It is the responsibility of the preparer to insert appropriate information where required, to select or delete optional clauses and delete all notes and the associated brackets "[]" before a draft agreement is provided to any person outside DWR (i.e. not an employee of DWR).

After editing the template sure to update the table of contents to reflect the correct page numbers. (Here's how: to update the page numbers right-click anywhere on the table of contents, select "Update Field", choose "Update page numbers only", and then click "OK".) Do NOT update the Exhibits TOC.

Agreement *[insert #]*
[Funding Recipient's Name]

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

Agreement Number: *[insert agreement number from SAP]*

PROJECT AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND THE

[insert name of funding recipient]

FOR

[insert Project name and Project Type]

FUNDED UNDER THE
DEFERRED MAINTENANCE PROJECT

OF

CONTROL SECTION 6.10 OF THE BUDGET ACT OF 2016

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Note to Preparer: After making the appropriate document edits make sure to update the table of contents to reflect the correct page numbers. In order to update the page numbers right-click anywhere on the table below, select "Update Field", choose "Update page numbers only", and then click "OK".

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
PROJECT AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
[Insert name of funding recipient]
UNDER CONTROL SECTION 6.10 OF THE BUDGET ACT OF 2016
(Public Resources Code Sections 5096.800 et seq.)

THIS PROJECT AGREEMENT, entered into by and between the 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 Project Agreement.

"Assurance Agreement" means the form of agreement between the Central Valley Flood Protection Board and Funding Recipient for the provision of assurances to the CVPB regarding the assumption of OMRR&R for the Project by Funding Recipient attached hereto as Exhibit D. Execution of the Assurance Agreement is a prerequisite to Phase II funding.

"Credit" means Funding Recipient expenditures toward Eligible Project Costs incurred prior to execution of a Project Agreement that are recognized by the State.

"Department" means the State of California Department of Water Resources.

"Eligible Project Costs" means the reasonable and necessary actual costs associated with the Project which are described in Paragraph 7, to the extent to which they are to be counted toward the Project Agreement Cost.

"Funding Recipient" means [Insert name of 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 this Project Agreement, and its successors and assigns.

"Implementation Procedures " means the procedures for the Deferred Maintenance Project (DMP) which govern (i) the process by which Department reviews and selects DMP repair projects to fund, and (ii) the resulting implementation process.

"Independent Review" means 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.

“Level of Protection” means the probability of flooding in any one year. It is expressed as 1 in x annual chance of flooding (e.g., 1 in 50 annual chance of flooding is a 50-year level of protection.”). This term is different than “Design Level of Performance” which deals with the performance level of the facility at issue based on the original intended design.

“Maintenance” means routine vegetation management, rodent control, sediment removal and mechanical service.

“Maintenance Costs” means the costs of OMRR&R.

“Material Breach” means failure of performance under the Project Agreement sufficient to defeat the purpose of the parties in entering into the Project Agreement and giving the non-breaching party the right to cancel the Project Agreement.

“OMRR&R” means operation, maintenance, repair, rehabilitation and replacement of the Project, Project Element(s) or Project Feature(s).

“Operations” means labor, facilities, inspections, and emergency response activities.

“Overall Work Plan” means the plan described in Paragraph 23(a) and Exhibit A-1.

“Post Construction Performance Reports” means the reports required by Paragraph 23(e) and further provided in the Assurance Agreement.

“Pre-Feasibility Cost Estimate Report” means a report prepared by Department for each DMP Project that provides: a description of the levee area; an identification of critical and serious sites; an evaluation of pipe repair alternatives and the preferred alternative; anticipated environmental compliance, regulatory, and real-estate needs; a pre-feasibility cost estimate for the preferred repair. A copy of the Pre-Feasibility Cost Estimate Report is provided as an attachment to the Eligibility Notice.

“Phase I” means the inspection(s) or evaluation(s) of pipes within SPFC facilities as further described in the Overall Work Plan developed for this Project Agreement and attached hereto as Exhibit A.

“Phase II” means the pipe repair, rehabilitation, replacement or removal work approved by Department following completion of Phase I as further described in the Overall Work Plan developed for this Project Agreement and attached hereto as Exhibit A, as the same may be amended from time to time.

“Project” means the project, including Phase 1 and Phase II, described in the Overall Work Plan.

“Project Completion Report” means the report required by Paragraph 23(d) and further described in Exhibit H.

“Project Costs” means the total cost of a Project, including Eligible Project Costs.

“Project Element” or “Element” means a discrete portion of a Project identified as such in the Overall Work Plan (e.g. a pipe or group of pipes to be repaired or replaced and identified as a “project element” 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” or “Feature” means a discrete portion of a Project Element identified as such 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.

Note to Preparer: the following definition should be deleted when preparing a Critical Repair with no Real Estate Acquisition or a Patrol Road Agreement. **“Project Real Estate Plan”** means 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 22 and Exhibit F.

“Quarterly Progress Reports” means the reports required by Paragraph 23(c) and further described in Exhibit C.

“Quarterly Work Plans” means the reports required by Paragraph 23(b) and further described in Exhibit C.

Note to Preparer: the following definition should be deleted when preparing an agreement with no Real Estate Acquisition **“Real Estate Capital Outlay Costs”** means 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 22.

Note to Preparer: the following definition should be deleted when preparing an agreement with no Real Estate Acquisition **“Real Estate Support Costs”** means reasonable acquisition services, appraisal services, geodetic and cadastral services, and environmental site assessment services, attorney's services fees, engineering services fees, court costs, and title and closing costs.

“Rehabilitation” means to restore a Project, Project Element or Project Feature by way of minor or major repairs.

Note to Preparer: the following definition should be deleted when preparing an agreement with no Real Estate Acquisition or a Patrol Road Agreement **“Relocation Assistance Costs”** means the reasonable and necessary costs from that portion of the Real Estate Capital Outlay Costs which are attributable to financial assistance for relocation as identified in the Project Real Estate Plan and Relocation Assistance Plan required and authorized in accordance with federal and State statutes and regulations, including Cal. Gov't Code §§ 7260 *et seq.*; California Relocation Assistance and Real Property Acquisition Guidelines (25 Cal. Code Regs. §§ 6000 *et seq.*); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (regulations at 49 C.F.R. Part 24).

Note to Preparer: the following definition should be deleted when preparing an agreement with no Real Estate Acquisition or a Patrol Road Agreement **“Relocation Assistance Plan”** means a plan which specifies all required acquisition and relocation assistance activities, responsibilities, and financial assistance required and authorized in accordance with federal and State statutes and regulations, including Cal. Gov't Code §§ 7260 *et seq.*; California Relocation Assistance and Real Property Acquisition Guidelines (25 Cal. Code Regs. §§ 6000 *et seq.*); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (regulations at 49 C.F.R. Part 24).

“Repair” means to fix or mend a Project, Project Element or Project Feature.

“Replacement” means replacement of Project, Project Element or Project Feature at end of life or after catastrophic failure.

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

“State Program Manager” means a representative for the State who 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 Project Agreement. The State Program Manager may appoint a State Project Manager to handle most project management-related tasks.

"State Project Manager" means a representative for the State who will receive all notices, demands, requests, consents, or approvals that are required under the Project Agreement to be in writing. The State Project Manager is appointed by the State Program Manager and can be changed by the State Program Manager upon written notice to all parties to this agreement.

"Statement of Costs" means a statement of incurred costs submitted pursuant to Paragraph 16.

"Project Agreement Cost" means the portion of the Project cost that is to be shared between the Department and the Funding Recipient. The costs contributed by other entities or programs are not included in the Project Agreement Cost.

"USACE" means the United States Army Corps of Engineers.

"Useful Life" means the period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented.

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing the Deferred Maintenance Project more specifically described in the Overall Work Plan pursuant to Control Section 6.10 of the Budget Act of 2016. Funds may be used only as provided in this Project Agreement for Eligible Project Costs for the Project described in the Overall Work Plan. Funding under this Project Agreement will be provided in two Phases. Phase 1 funds will be made available upon the execution of this agreement and satisfaction of applicable prerequisites described elsewhere in this Project Agreement. Phase II funds will be made available for pipes located on SPFC facilities and only upon (i) completion of Phase I, (ii) review and approval of all Phase I work by DWR, and (iii) satisfaction of applicable prerequisites described elsewhere in this Project Agreement, including (a) execution of an amendment to this Project Agreement describing Phase II costs and (b) execution of an Assurance Agreement between Funding Recipient and the CVFPB. Funding for all Phases is contingent on funding being made available to Department in accordance with Control Section 6.10 of the Budget Act of 2016.
2. **TERM OF PROJECT AGREEMENT.** The term of the Project 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 date based on schedule for project closeout incorporating adequate time for final reporting and post-construction monitoring]** or when all Funding Recipient and Department obligations under this Project Agreement are fully satisfied, whichever comes first.
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 withhold funds as provided in Paragraphs 18-20 of this Agreement.
4. **ESTIMATED PROJECT COST.** The reasonable cost of Phase I of the Project is estimated to be **[insert Phase I Project cost amount]**. The Reasonable cost of Phase II of the Project is estimated, at the time of execution of this Project Agreement, to be **[insert phase II Project cost amount]** and shall be revised prior to initiation of Phase II by way of an amendment to this Project Agreement.
5. **LIMIT ON STATE FUNDS.** Pursuant to Section 6.10 of the Budget Act of 2016 and subject to the availability of funds, including any mandates from the Department of Finance, the Pooled Money Investment Board ("PMIB") or any other State authority, the State will provide to Funding Recipient in accordance with the terms of this Project Agreement funding in the amount not to exceed **[insert funding amount]**, except as provided in Paragraph 30. The State will not make payments of any kind -- advances or reimbursements -- until funding is made available by the State Treasurer, after allocation decisions are made by the PMIB and Department of Finance. Funding recipients will only be entitled to State funds for Eligible Project Costs, as defined in Paragraph 7, and the funding provisions in Paragraph 8. The State may, without requiring an

Amendment to this Project Agreement, increase or decrease this amount only as provided for in Paragraph 30.

6. ELIGIBLE PROJECT COSTS. Funding Recipient shall only apply State funds for Eligible Project Costs. Except as otherwise provided in Paragraph 15(b), Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after the LMA has passed the resolution accepting the funds Exhibit E, , and returned the signed Project Agreement to DWR. The Implementation Procedures provide a summary of the costs which are considered eligible or non-eligible project costs.
7. COST SHARING BY THE STATE AND FUNDING RECIPIENT. The State will pay one hundred percent (100%) of Eligible Project Costs for each Phase. Funding Recipient will be responsible for all costs that are not Eligible Project Costs.
8. **RESERVED.** *[If State is requiring LMA pursuit of federal credit and reimbursement for the Project, replace this section title "RESERVED" with the text below and make sure to update the table of contents.]*

FEDERAL CREDIT AND REIMBURSEMENT. *Funding Recipient understands that the State/Local cost sharing percentages provided in Paragraph 8 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. The Funding Recipient agrees:*

- a) *The State shall not disburse any funds under this Project Agreement until the Funding Recipient has submitted a complete application for a federal credit determination by the USACE 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 USACE as directed by the State and the USACE 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 27 of this Project Agreement.*
- b) *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 USACE concerning the federal credit or reimbursement application.*
- c) *If requested to do so by the USACE, Funding Recipient shall enter into an agreement with the USACE 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.*
- d) *If the USACE decides that amendments to the federal credit or reimbursement application, this Project Agreement, or new agreements between the Funding Recipient and the State are required for the USACE to provide federal credit or reimbursement, Funding Recipient shall not unreasonably withhold its consent to enter into such agreements.*
- e) *Funding Recipient shall diligently pursue obtaining federal credit or reimbursement from the USACE and failure to do so shall be considered an event of default under this Project Agreement.*

- f) *Federal credit/reimbursement from the USACE 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 USACE. If the Funding Recipient is awarded federal credit/reimbursement by the USACE for a Project, Project Element, or Project Feature by following the procedures set forth above or through any other means, Funding Recipient will 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 USACE 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 9(g) of this Project Agreement.

- g) *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 Project 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 Project 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 27 of this Project Agreement.]

9. **FUNDING RECIPIENT'S RESPONSIBILITY FOR WORK.** Funding Recipient shall be responsible for work and for persons or entities engaged in work, including subcontractors, suppliers, and providers of services. Funding Recipient shall give personal supervision to any work required under this Project 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 Project 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 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. Upon execution of this Project Agreement, Funding Recipient agrees that it is acting in an independent capacity and is solely responsible for design, construction, and (except as otherwise provided by Paragraph 25(b) if applicable) OMRR&R of the Project, Project Element(s) and Project Feature(s) constructed, repaired, rehabilitated or replaced with funds provided under this Project Agreement. 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.

Preliminary documents provided by the State as part of the Notice of Eligibility or Project Agreement negotiations, including the Pre-Feasibility Cost Estimate Report, and any communication provided by the State regarding those documents, are provided solely for the purpose of defining the Overall Work Plan as provided in Attachment A and shall not be deemed to relieve or restrict Funding Recipient's responsibility for design, construction, and OMRR&R. The Funding Recipient's costs for the technical review of, and for assisting State in the development of, the Overall Work Plan and supporting documents, shall be considered Eligible Project Costs contingent upon State's acceptance of those costs as reasonable and execution of this Project Agreement.

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 Project 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, defined in subparagraphs a – f below, before State shall be obligated to disburse any funds pursuant to this Project Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Project Agreement. State shall have no obligation to disburse money under this Project Agreement unless and until the disbursement is in accordance with requirements of the Control Section 6.10 of the Budget Act of 2016. The following are conditions precedent to funding for Phases I and II unless otherwise noted:

- a) Funding Recipient has executed this Project Agreement and provided a copy of a resolution duly adopted by its governing body accepting the Funds, and designating an authorized representative to execute this Project 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 Project Agreement.
- b) Funding Recipient has executed an Assurance Agreement by and between Funding Recipient and the Central Valley Flood Protection in substantially the form attached hereto as Exhibit D as provided for in Paragraph 25 of this Project Agreement. This condition must be satisfied prior to disbursement of any funds for Phase II.
- c) Funding Recipient has demonstrated compliance with (i) all applicable requirements of 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.

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 14 of this agreement until Funding Recipient has

completed its environmental work and issued a notice of decision in connection with the Project Element, Project Feature or Project for which the approval letter has been requested.

- d) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports as required by Paragraph 23.
- e) The necessary funding has been made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and the Department of Finance, as discussed above in Paragraph 5.
- f) All Phase I work shall be completed by Funding Recipient and reviewed, and accepted by the State prior to the performance of Phase II work or funding of Phase II work by Department.
- g) *[If project includes federal credit/reimbursement requirement, include this subpart: An application for credit or reimbursement has been filed with the federal government as provided for in Paragraph 9 of this Project Agreement.]*

13. ADVANCE WORK APPROVALS BY STATE. At least forty-five days prior to awarding a construction contract or initiating construction, whichever is earlier, 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 Paragraph 23. No disbursements of funds for the work described will be made until the State has approved the engineering plans and specifications. *[Note: If the project involves shared design responsibilities (i.e. Department agrees to provide design assistance for a project to be implemented by the LMA), include text defining the shared responsibility and identifying LMA requirements specific to design efforts].*

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 23. 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.

If the Overall Work Plan includes design and construction work, such work may 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 Project Element(s) or Project Feature(s) that are ready. An additional approval letter will be required from the Department for each subsequent Project Element or Project Feature. As described further in Paragraph 13(c) 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.

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

- a) For all Eligible Project Costs, work will be divided into two categories: non-construction and construction. Though prior written approval is strongly advised any time a Local Agency anticipates it will request credit, the Department will consider, on a case-by-case basis, crediting non-construction work performed without prior written approval. In contrast, the Department must have issued prior written approval for actual construction work to be deemed creditable and any conditions described in the

written approval must be met before the credit is afforded. The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction of the DMP repair project as defined in the Overall Work Plan. The Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 16. The Statement of Costs shall be submitted within 45 days of the effective date of this Project Agreement. .

- b) *[for projects including advance payments, include the following sub paragraph: 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.*

Pursuant to Paragraph 23, State shall pay in advance on a quarterly basis for approved Eligible Project Costs (excluding Real Estate Capital Outlay Costs of the work covered in the Quarterly Work Plans submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 16. 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 Project 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 10 percent (10%). 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 18.]

- c) *[If project includes land acquisition, include the following subpart: Payments for eligible Real Estate Capital Outlay Costs, if applicable, will be made in accordance with the provisions of Paragraph 22 and Exhibit F.]*

15. STATEMENT OF COSTS. The Funding Recipient shall provide State with a Statement of Costs or Statements of Cost, on forms provided by the State for all Eligible Project Costs *[for projects including real estate acquisition, add the following clause: with the exception of Eligible Real Estate Capital Outlay Costs, if applicable, for which the Funding Recipient will provide documentation in accordance with Paragraph 22 and Exhibit F.]*

- a) Statements of Costs shall be filed by the Funding Recipient quarterly or as otherwise specified in this paragraph. 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) 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.

- c) 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 16(g). State will notify Funding Recipient of any Statement of Costs so rejected, and the reasons therefore.
- d) A Statement of Costs containing a mathematical error will be corrected by State, after consultation with the 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.
- e) 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 Project Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Project 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). State and Funding Recipient shall then attempt to negotiate a resolution of the claim and adjust the Statement of Costs accordingly. 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. If the claim remains disputed, it may be resolved in accordance with the dispute resolution process set forth in Paragraph 21. 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). The requirements for close-out of a Project, Element, or Feature are provided in Exhibit H. A Project, Project Element, or Project Feature will be considered completed when the Funding Recipient has provided the information specified in Exhibit H to the satisfaction of 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, as provided in Paragraph 6.

- f) 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 a reasonable investigation. The signed statement shall be submitted under penalty of perjury.
 - g) 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. If the State opts to modify the requirements, it shall notify Funding Recipient in writing of the change(s).
16. DISBURSEMENT. Following the review of each invoice, State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes and to provisions as specified in this Project Agreement. Notwithstanding any other provision of this Project Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on State bonds, pursuant to any federal statute or regulation. Any and all money disbursed to Funding Recipient under this Project 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 for Real Estate Capital Outlay Costs and Eligible Project Costs quarterly advances, the State shall withhold five percent (5%) 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 and, with respect to Phase II work, the Funding Recipient has executed an Assurance Agreement between the Central Valley Flood Protection Board and the Funding Recipient (Exhibit D). A Project, Project Element, or Project Feature shall not be considered completed until the requirements of Exhibit H have been met to the satisfaction of the State. Among these requirements are: (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, Funding Recipient provides 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.

If State determines that the Project is not being constructed substantially in accordance with the provisions of this Project Agreement, or that Funding Recipient has failed in any other respect to comply substantially with the provisions of this Project 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. If the Funding Recipient must remedy a failure to comply, and the remedy increases Eligible Project Costs, the State may disallow payment of the State's share of the increase in Eligible Project Costs.

The Funding Recipient may request the early release of funds withheld pursuant to this provision in accordance with the requirements set forth in Exhibit G of this Project Agreement.

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 the balance of the funds withheld pursuant to Paragraph 18 (other than requests for early release of funds made by the Funding Recipient pursuant to Exhibit G), that portion that has been disbursed shall be repaid within 60 days with interest at the California general obligation bond interest rate with interest beginning to accrue at the time the State notifies the Funding Recipient of its decision. Refusal of Funding Recipient to repay within 60 days may, at the option of State, be considered a material breach of this Agreement and treated as default under Paragraph 21.

19. WITHHOLDING THE ENTIRE FUNDING AMOUNT. If State notifies Funding Recipient of its decision to withhold the entire funding amount pursuant to Paragraph 18, this Project Agreement shall terminate and the State shall no longer be required to provide funds under this Project Agreement.

20. DEFAULT PROVISIONS AND DISPUTE RESOLUTION.

a) Events of Default. Funding Recipient will be in default under this Project Agreement if any of the following occur:

- 1) Material breach of this Project Agreement, including any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
- 2) Making any false warranty, representation, or statement with respect to this Project Agreement or the application filed to obtain this Project Agreement; or
- 3) Failure to make any remittance required by this Project Agreement.

b) Consequences of Default. 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 prescribed by the State, which shall be no less than 10 days from the notice of default, State may do any or all of the following:

- 1) Cancel the Project Agreement.
- 2) Complete the Project using its own resources.
- 3) Contract with the current or any other contractor to complete the Project.
- 4) Require that the Funding Recipient return all or a portion of state funds, with interest at the State Surplus Money Investment Fund rate at the time of default, accruing from the date the funds were provided.

c) Dispute Resolution.

Any claim that Funding Recipient may have regarding the performance of this Project Agreement, including but not limited to claims for an extension of time, shall be submitted in writing to the Program Manager at the 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 good faith resolution of such claim and process an Amendment to the Project Agreement to implement the terms of any such resolution, if deemed necessary by the parties.

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

In the event State finds it necessary to enforce any provision of this Project 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. **RESERVED.** *[For Projects including land acquisition, include the following paragraph (For all other Projects this Paragraph is deleted and left as "Reserved": LAND ACQUISITION PROCESS. Unlike other Eligible Project Costs, certain expenditures made for land acquisition under this Project 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 22 and Exhibit F. Paragraphs 14 to 20 do not apply to Real Estate Capital Outlay Costs. Real Estate Support Costs are subject to payment as provided in Paragraphs 14 to 20. 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 20.*

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 Project Agreement. The applicable land acquisition standards and requirements as set forth in Exhibit F shall apply to this Project 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 of the Project, 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; and providing relocation assistance for qualified occupants of acquired property, as required by state and federal statutes, rules, and regulations.

The Funding Recipient may also include acquire additional right-of-way for an existing State-authorized flood project if: (1) the Funding Recipient provides a detailed justification for why additional right-of-way is needed to ensure the adequacy of land rights for purposes of OMRR&R; and (2) the State in its sole discretion finds that acquisition of additional right-of-way is justified.

Funding Recipient will submit to State a Project Real Estate Plan. Guidelines for such a plan, to establish acceptable Project Real Estate Requirements, as depicted in the Exhibits Binder, will be provided by the State. The Project Real Estate Plan shall include such details as narrative description of the real estate requirements including a breakdown 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, 60% 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 Capital Outlay Costs and Real Estate Support 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 Project Agreement and as depicted in the Exhibits Binder, 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 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, and lease 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, as depicted in the Exhibits Binder, 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 agreements including clearing title exceptions at close of escrow, funding, and issuance of a policy of title insurance.*
- 8) *Preparation of a Relocation Assistance Plan.*
- 9) *Preparation of a land acquisition final accounting package.*

Descriptions of these activities are set forth in detail in Exhibit F to this Project Agreement and are depicted in the Exhibits Binder.

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 fee 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 project cost 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. Regardless of which disbursement approach is used, if a Local Agency proposes to enter into an agreement to purchase real estate for the Project or indicate its assent to a proposed court order setting just compensation, the Local Agency is required to obtain the prior written approval of the State. A Local Agency that does not obtain prior written approval from the State is at risk of disallowance of any amount over what the State, in its sole discretion, determines is just compensation to the landowner. The State may, at its sole discretion, waive the requirement to obtain prior written approval of the State.*
- 1) *Standard Disbursement Approach.* *Upon completion of the applicable land acquisition standards and requirements set forth in Exhibit F, to this Project Agreement, including the submission of a land acquisition final accounting package for the entire project, the State will disburse 100% of the project cost of real estate capital outlays to Funding Recipient.*
 - 2) *Advancement of Project Costs Prior to Completion of Land Acquisition Requirements.* *If requested by Funding Recipient, the State will advance fifty percent (50%) of the costs of the appraised fair market value of the property after State completes its preliminary review and approval of the Project Real Estate Plan, appraisals reports, cadastral and geodetic documentation environmental site assessment reports, 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 cost of the appraised fair market value of the property. The State will reimburse Funding Recipient for the remaining twenty-five percent (25%) of the cost of the approved fair market value of the property plus any unpaid associated capital outlays, up to the approved fair market value of the Real Estate Capital Outlay Costs, after Funding Recipient has followed the entire approval process including the submission of a land acquisition final accounting package as depicted in the Exhibits Binder for individual parcels. If the amount approved is less than the amount already paid to Funding Recipient, the difference will be deducted from the Cost for other project expenses not yet reimbursed to Funding Recipient. If the final cost of the approved fair market value is higher than the 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 Project 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 costs.

- 3) Eminent Domain Disbursement Procedures. If eminent domain proceedings are necessary pursuant to applicable law, including Gov't Code Section 7267.1, prior to receiving any reimbursement the Funding Recipient shall provide to the State:
- (a) A copy of the adopted and executed Resolution of Necessity;
 - (b) A copy of the Complaint in Eminent Domain filed with the appropriate Court; and
 - (c) A statement justifying why the acquisition of the property by eminent domain is necessary, including a history of efforts to settle with the landowner.

If the Funding Recipient fails to provide these documents supporting use of eminent domain, the State will withhold the State's share of the Real Estate Capital Outlay Costs for acquiring the property, until such time as the appropriate documents are provided.

Following its preliminary review and approval of the independent appraisal of the parcel submitted by the Funding Recipient, the State will: (1) advance 100% of the cost 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, cadastral, geodetic, and environmental site assessment reviews, transaction reviews, and Department approvals, and a Court Order approving the condemnation of the property, the State will pay the cost 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 and approval by the Department of General Services is required. However such payments will be subject to the cap on total funds established in the Project Agreement, Paragraph 5. Therefore, if the cost of the Court approved total just compensation is higher than the cost 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 Project Agreement.

- c) Relocation Assistance Cost. In order for Relocation Assistance Costs to be eligible for cost sharing with the State, a Funding Recipient is required to submit a Relocation Assistance Plan to the State for

preliminary review and approval. After the State completes its preliminary review and approval of the Relocation Assistance Plan, and approves a request for advance of Relocation Assistance Costs, the State shall advance seventy-five percent (75%) of the cost of the Relocation Assistance Costs as identified in the Relocation Assistance Plan and specified in the request for advance of Relocation Assistance Costs. The State will reimburse Funding Recipient for the remaining twenty-five percent (25%) of the cost of Relocation Assistance Costs after the Relocation Assistance Plan, associated file documents, and cost expenditures have been reviewed and approved by the State. Guidelines for Relocation Assistance Plans and Request for Advance of Relocation Assistance Costs are depicted in the Exhibits Binder.

- d) Real Estate Credit. If the Funding Recipient seeks reimbursement of eligible Real Estate Capital Outlay Costs for a parcel where prior to execution of this Project Agreement 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 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 22 and Exhibit F. 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) Remnant Real Property. In the event any lands, easements, or rights of way acquired by Funding Recipient are not used for the Project, and State has participated in cost sharing for such acquisitions, 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 percentage of the approved fair market 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. Funding Recipient must provide State with notice of all proposed leases of property acquired under this agreement prior to the Funding Recipient initiating negotiation of those leases. All proposed lease agreements must be approved by the State prior to 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. Guidelines for lease agreements and forms to be used are depicted in the Exhibits Binder. .

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 16 of the Project 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 not approved by the State 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 Project Agreement shall not be subject to any lease for longer than one year remaining when transferred to the State without the express written consent of the State.

If the Funding Recipient executes or modifies a lease for land included in the Project Real Estate Plan without adhering to the requirements of this Paragraph, the State at its sole discretion may deduct the State's share of the funds used to acquire the land from the Final Statement of Costs prepared upon completion or termination of the Project or any Project Element or Project Feature.

- g) *If the Funding Recipient must remedy a failure to comply with the provisions of Paragraph 21 and Exhibit F, and the remedy increases Eligible Project Costs, the State may disallow payment of the State's share of the increase in Eligible Project Costs. If the Funding Recipient fails to comply substantially with the provisions of Paragraph 22 and Exhibit F, and if Funding Recipient does not remedy any such failure to the State's satisfaction, the 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.*
- h) *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.*

22. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT. *[Note: Text below reflects anticipated needs for most DMP projects which will be performed in phases such that LMA will request multiple funding payments as individual project features are completed. For smaller, short duration projects, the preparer may choose to simplify this paragraph to minimize reporting requirements. However such simplification should consider that reimbursements to the LMA are contingent upon work plan and report submittals, so fewer reporting requirements will also minimize the frequency by which LMAs may seek reimbursement.]*

- a) Overall Work Plans: The forms of Overall Work Plan, Budget, and Schedule for the Project are included as Exhibit A to this Project Agreement.
- b) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Project Agreement. Within seven (7) days of the effective date of this Project Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Project 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 Project 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 Exhibit B, Paragraph B-8 of this Project Agreement. Exhibit H, provides further information regarding what the report is to contain.

- e) [For Projects which require OMRR&R Plan revisions under Paragraph 25 include the following paragraph for Projects which do not require OMRR&R revisions, delete and replace with "Reserved"): **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 THE PARTICULAR PROJECT]. Funding Recipient shall also report any additional costs and/or revenues deriving from the Project. This record keeping and reporting process shall be repeated annually as provided in the OMRR&R Agreement.]
- f) Reserved.
- 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 Project Agreement in order to improve administration of the DMP or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.
- h) Flood Risk Resolution: Funding Recipient has acknowledged the current Level of Protection and 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. Funding Recipient has provided copies of the resolution or resolutions to the State. The Funding Recipient acknowledges that each resolution provides that any subsequent resolutions that would modify or rescind the resolution must be first approved by the State. Funding Recipient agrees that it shall provide any subsequent resolution for approval by the State no less than thirty (30) days before the resolution is acted upon by the governing body of the affected city or county or other agency with flood management responsibilities. State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.
23. **RESERVED.** [For projects which require OMRR&R Plan revisions under Paragraph 25 or include project-specific modifications that may change safety and emergency response processes, include the following paragraph: **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 California 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 Project Agreement and may be treated as default under Paragraph 21. Funding Recipient shall update the plan as provided in the OMRR&R agreement attached hereto as Exhibit D.]
24. OPERATION, MAINTENANCE, REPAIR, REHABILITATION AND REPLACEMENT (PHASE II ONLY). All provisions of this section 25 will apply if Phase II work is to be undertaken by Funding Recipient. If no Phase II work is to be undertaken by Funding recipient this section shall have no force or effect. Prior to requesting funds for Phase II work, Funding Recipient agrees that it will execute an Assurance Agreement with the Central Valley Flood Protection Board, or a successor thereto, in substantially the form of Exhibit D to this Project Agreement, which sets forth the obligations of the Funding Recipient to do the OMRR&R work for Phase II of the Project. Phase II funding is contingent upon execution of an Assurance Agreement by Funding Recipient. Refusal of Funding Recipient to execute an Assurance Agreement in substantially the form of Exhibit D prior to requesting funding for Phase II, or failure to do the OMRR&R work in accordance with the Assurance Agreement may, at the option of State, be considered a breach of this Project Agreement and may be treated as default under Paragraph 21.

If the Funding Recipient is not currently the entity responsible for OMRR&R of the associated federally authorized project, the Funding Recipient may, with the prior written approval of Department, satisfy the requirement to execute an Assurance Agreement by providing to Department evidence satisfactory to the

Department that the entity(ies) currently responsible for OMRR&R of the associated federally authorized project has executed an Assurance Agreement for Phase II work in substantially the form of Exhibit D of this Project Agreement. Department's decision to accept satisfaction of the Assurance Agreement requirement of this Project Agreement by a local agency(ies) other than Funding Recipient shall be made in Department's sole discretion and shall be based upon, among other things, demonstration that such local agency(ies) have satisfactorily performed existing OMRR&R duties.

[For Projects only that include substantial modifications to SPFC warranting revision to the LMA's OMRR&R Manual, insert the following paragraph:

Funding Recipient agrees to provide State an acceptable detailed Interim Standard OMRR&R Manual at least 120 days before seeking an early partial release of withheld funds for a Project Feature, Project Element, or Project in accordance with the provisions of Exhibit G. If Funding Recipient does not seek early partial release of withheld funds, the Interim Standard OMRR&R Manual shall be provided at least 120 days before Project Closeout in accordance with the provisions of Exhibit H. The manual shall be consistent with the requirements of 33 C.F.R. § 208.10 and other applicable USACE engineering regulations.]

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 Project Agreement, including those necessary to perform design, construction, or OMRR&R for the Project. Funding Recipient shall be responsible for observing and complying with all applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including environmental, procurement and safety laws, rules, regulations, and ordinances. Upon request by State, Funding Recipient shall provide copies of permits and approvals.

Without limiting the foregoing, Funding Recipient will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including 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 and funded pursuant to this agreement, including any payments to the Department of Industrial Relations under Labor Code Section 1771.3.

26. PROGRAM AND PROJECT MANAGERS. Either party may change its Program or Project Manager upon written notice to the other party.
- a) The State Program Manager shall be the Chief, Division of Flood Management, Department of Water Resources. State 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 Project Agreement. The State Program Manager may delegate any task to the State Project Manager. Correspondence to the State Program Manager will be directed to:

Mr. Mark R. List
DMP Program Manager
Department of Water Resources
P.O. Box 219000
Sacramento, CA 95821-9000
(916) 574-1243
Mark.List@water.ca.gov

- b) The 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 Project 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. Correspondence to the Funding Recipient's Program Manager will be directed to:

[Enter contact information including address for Funding Recipients Program Manager (or State Project Manager if delegated by State Program Officer.)]

27. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Project 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 electronic means followed by submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by 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 electronic means will be effective on the date of successful transmission, which is documented in writing. Either party may, by written notice to the other, change its Program or Project Manager or designate a different address that shall be substituted for the one identified in Paragraph 27.

28. INCORPORATION OF EXHIBITS. This Project Agreement incorporates:

Exhibit A, Overall Project Work Plan, Budget, and Schedule

Exhibit B, Standard Conditions

Exhibit C, Quarterly Work Plan and Report Formats

Exhibit D, Operation and Maintenance Agreement

Exhibit D-1, Standard Conditions

Exhibit, D-2 Resolution Accepting Standard Conditions Template

Exhibit E, Resolution Accepting Funds Template

Exhibit F, **Land Acquisition Process Requirements (for critical repair agreements not requiring Land Acquisition and Patrol Road Agreements, replace with "Reserved")**

Exhibit G, Early Partial Release of Certain Withheld Funds

Exhibit H, Project or Element/Feature Closeout

Exhibit H-1, Accounting for Contributions toward Certain Supplemental Benefits (for critical repair agreements without Supplemental Benefits and Patrol Road Agreements, delete this Exhibit)

Exhibit I, State Audit Document Requirements and Funding Guidelines for Funding Recipients

[Note: Be sure delete any exhibits that are not used and update exhibit references in this template accordingly]

29. MODIFICATION OF OVERALL WORK PLAN. After the Project Agreement is executed, Department will consider approving or requiring changes to the work plan due to circumstances that were not reasonably foreseeable at the time the Project Agreement was executed. Department will allow non-material changes to be made to the work plan without formally amending the Project Agreement. Non-material changes include:

- Changes to the design plans if, at the sole discretion of Department, Department determines changes will improve the project design and will not result in a budget revision or an increase in the overall schedule beyond the term of the Project Agreement.
- Changes to portions of the work plan concerning budget that would not result in an increase to the state's funding commitment, as explained below.
- Changes to the work plan's project schedule that do not extend the term of the Project Agreement.

If, at Department's direction, changes in the scope of the work plan require an increase in funding, Department may authorize the use of up to 10 percent of any contingency fund without amending the Project Agreement.

If the Funding Recipient and the State agree to a material change with respect to the Overall Work Plan that decreases the Project cost there shall be proportionate reduction in the maximum amount payable by the State.

If a change to the cost-sharing formula causes the overall state share of the Project cost to increase or decrease then the parties must amend the Project Agreement which will be subject to approval by the Department of General Services.

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 Project Agreement. Within a reasonable time after the material change is approved, the State and the Funding Recipient shall also formally amend this Project Agreement to reflect the material change.

30. Reserved.

31. INDEPENDENT REVIEW. [Note: for Patrol Road Agreements, or Critical Repairs with typical designs - Not requiring USACE 408 major permit, delete this paragraph and replace the title with "RESERVED."]

[For Department-charged Independent Review insert this paragraph: The Department will select a panel of independent reviewers and administer an independent review of the Funding Recipient's design and construction plan in consultation with the Funding Recipient. The costs of the Independent Review are Eligible Project Costs and will be cost-shared in the same manner as all other eligible cost in accordance with Paragraph 8. 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 so long as those changes add no more than 15% to the cost of the Project and the State requires the change(s). The State also reserves the right to remove features of the Project that have become unaffordable or no longer demonstrate economic feasibility because of the Independent Review results. If the changes suggested by the Independent Review cost more than 15% of the Project Agreement Cost and render the Project unaffordable, the State and Funding Recipient commit to working together in good faith to identify more affordable, feasible and efficient ways of achieving the Project goals. This agreement to work together in good faith includes a commitment to seek additional sources of funding for these increased Project costs. Modifications to the Overall Work Plan shall be made in accordance with Paragraph 30 of this Project Agreement.]

[For LMA-charged Independent Review insert this paragraph: The Funding Recipient will select a panel of independent reviewers of at least two and no more than five individuals who are distinguished experts in engineering, hydrology, or other appropriate discipline and free of any real or apparent conflict of interest. Department must approve the number and selection of the independent reviewers and provide direction as to the scope and extent of required review activities. The Funding Recipient will administer the Independent Review Panel's review of the Funding Recipients design and construction plan in consultation with the Department. The costs of the Independent Review are Eligible Project Costs and will be cost-shared in the same manner as all other eligible cost in accordance with Paragraph 8. 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 so long as those changes add no more than 15% to the cost of the Project and the State requires the change(s). The State also reserves the right to remove features of the Project that have become unaffordable or no longer demonstrate economic feasibility because of the Independent Review results. If the changes suggested by the Independent Review cost more than 15% of the Project Agreement Cost and render the Project unaffordable, the State and Funding Recipient commit to working together in good faith to identify more

affordable, feasible and efficient ways of achieving the Project goals. This agreement to work together in good faith includes a commitment to seek additional sources of funding for these increased Project costs. Modifications to the Overall Work Plan shall be made in accordance with Paragraph 30 of this Project Agreement.]

32. FUNDING RECIPIENT COMMITMENTS. Funding Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Project 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 financing.

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

State of California
Department of Water Resources

By _____
Name _____
Title Chief, Division of Flood Maintenance
Date _____

Approved as to Legal Form
And Sufficiency

By _____
Name Robin E. Brewer
Title Asst. Chief Counsel
Date _____

[Funding Recipient]

By _____
Name _____
Title _____
Date _____

Approved as to Legal Form
And Sufficiency

By _____
Name _____
Title _____
Date _____

Exhibit A OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE

[Note: As the basic requirement is (i) workplan, (ii) budget and (iii) schedule, this exhibit could remain as is with this limited description. However, since projects will be Department-directed, preparer may reference and include the Pre-Feasibility Cost Estimate Report in this exhibit.]

Directions: DWR Project Manager/ preparer shall prepare an Overall Work Plan, Overall Project Budget, and Overall Project Schedule. In preparing these documents, if the Project has separable elements, Preparer may 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, Preparer may define the Project Features and provide separate budgets and schedules for each Project Feature. Preparer should include all work to be done with the respect to a Project in the plan, budget, and schedule.

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

ARTICLE A-1-C. ROLES & RESPONSIBILITIES CHECKLIST

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

Exhibit B STANDARD CONDITIONS

B-1 GOVERNING LAW: This Project 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 Project Agreement.

B-3 AMENDMENT: This Project 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 Project Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Project 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 Project 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 Project Agreement, and State may elect to pursue any remedies provided in Paragraph 21 of the Project Agreement 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 Project Agreement with respect of all matters connected with this Project Agreement, including but not limited to, the cost of administering this Project Agreement. All records of Funding Recipient or subcontractors shall be preserved for this purpose for at least three (3) years after Project completion.

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 Project 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 Project 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 Project 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 Project Agreement, whichever 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Project 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 21 of the Project Agreement.

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 Project 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, Deferred Maintenance Project, 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 Project 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.shtml> 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 Project 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 shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from the planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its

contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.

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

B-16 OPINIONS AND DETERMINATIONS: Where the terms of this Project 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 REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Project 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-18 SEVERABILITY: Should any portion of this Project Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Project Agreement shall continue as modified.

B-19 WAIVER OF RIGHTS: None of the provisions of this Project 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 Project Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Project 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-20 TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 21 of the Project Agreement, the State may terminate this Project Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Project Agreement at the time and in the manner herein provided including but not limited to reason of default under Paragraph 21 of the Project Agreement.

B-21 INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Project Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

B-22 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, California Government Code § 87100 *et seq.*

- d) Employees of and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

B-23 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 Project Agreement and will make its contractors and subcontractors aware of this provision.

B-24 AMERICANS WITH DISABILITIES ACT: By signing this Project 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-25 NONDISCRIMINATION CLAUSE: During the performance of this Project 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 (Government 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 Project Agreement.

B-26 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Project 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 Project 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 Project 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-27 UNION ORGANIZING: Funding Recipient, by signing this Project Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Project Agreement. Furthermore, Funding Recipient, by signing this Project Agreement, hereby certifies that:

- a) No State funds disbursed by this Project 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 Project 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-28 BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Project Agreement does not appropriate sufficient funds for the Deferred Maintenance Project, this Project 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 Project 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 Project Agreement and Funding Recipient shall not be obligated to perform any provisions of this Project Agreement. Nothing in this Project 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 Project Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Project Agreement with no liability occurring to State, or offer a Project Agreement amendment to Funding Recipient to reflect the reduced amount.

B-29 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 Project Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

B-30 DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the Deferred Maintenance Project and throughout the term of this Project Agreement, such reports, data, information, and certifications as may be reasonably required by State.

B-31 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 Project 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 Project 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-32 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-33 CHILD SUPPORT COMPLIANCE ACT: For any Project 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-34 PRIORITY HIRING CONSIDERATIONS: If this Project Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Project Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

B-35 DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this Project 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-36 FUNDING RECIPIENT NAME CHANGE: Approval of the State's Program Manager is required to change the Funding Recipient's name as listed on this Project 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-37 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

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

QUARTERLY WORK PLANS

Quarterly Work Plans shall generally use the following format and reflect work to be completed over the following quarter. This format may be modified as necessary to effectively communicate information on the various projects contained in the Deferred Maintenance Project.

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 Project 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 15(b) of the Project Agreement;
- The amount of funds the Funding Recipient intends to expend to meet its funding obligations under the Project Agreement.

For projects that include eligible Real Estate Capital Outlay Costs and Real Estate Support Costs, such costs will be listed separately from other Eligible Project Costs in the discussion of 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 Deferred Maintenance Project.

The report should reflect the status of all of the projects identified in the Project 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;
- .

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 Project Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan;
- 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;
- Identify total interest earned on State funds paid as a result of this Project Agreement; and
- Identify the gross payments received from leasing property acquired as a result of the projects funded by this Project Agreement and identify the State share of such amount.

For projects that include eligible Real Estate Capital Outlay Costs and Real Estate Support Costs, such costs will be listed separately from other Eligible Project Costs in the discussion of 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 Project Agreement and a revised schedule, by task, if changed from latest reported schedule.

Exhibit D

SEE ATTACHMENT A FOR CURRENT O&M AGREEMENT LANGUAGE

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Exhibit E
RESOLUTION ACCEPTING FUNDS TEMPLATE

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 Control Section 6.10 of the Budget Act of 2016, that the funds awarded to

_____ by the California Department of
(Agency, city, county, or other)

Water Resources for a State-Federal Flood Control System Modification Program project titled:
_____ are hereby accepted.
(Project title)

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

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

sign a Project Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement.

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

of the _____
(Name of Funding Recipient)

on _____
(Date)

Affix official seal here

Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Exhibit F LAND ACQUISITION PROCESS REQUIREMENTS

For Critical Repair Agreements not requiring Land Acquisition and Patrol Road Agreements
Delete the language below and replace the title "LAND ACQUISITION PROCESS
REQUIREMENTS" with "RESERVED"

- 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, and 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 Grant Deed or Easement Deed as directed by the State, in a form consistent with a sample to be provided by the State. The State shall have sole discretion to determine whether the real estate rights are acquired in the form of a Grant Deed or Easement Deed.

After completion of all Project acquisitions, and in concurrence with State, Funding Recipient will subsequently convey to State, in the name of The Sacramento and San Joaquin Drainage District or successor entity, all real property interests using Grant Deed or Easement Deed as directed by the State, in a form consistent with a sample to be provided by the State. For real estate rights acquired by the Funding Recipient in whole or in part with funds provided by the State, the State shall have sole discretion to determine: (1) whether to require the conveyance of all or some of the real estate rights to the State; and (2) whether the conveyance will be by Grant Deed or Easement Deed

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

Funding Recipient shall assure that property vested by Funding Recipient, and subsequently conveyed 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 as depicted in the Exhibits Binder.

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 as depicted in the Exhibits Binder.

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 Project 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 22 (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 as depicted in the Exhibits Binder.

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 and a right of way contract (purchase agreement) in a form consistent with a sample depicted in the Exhibits Binder, 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 the Relocation Assistance Plan if it is applicable.

Funding Recipient shall provide State for review and approval purposes, the subject property's right of way contract (purchase 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, the negotiator 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. 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 cannot 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:** Funding Recipient shall provide State a memorandum of settlement package (MOS), in a form consistent with the sample depicted in the Exhibits Binder. 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.

Final transactions will be reviewed and approved by State.

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 Project 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.

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.

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 Project Agreement and hence subject to state cost sharing requirements.

After completion of all Project acquisitions, and in concurrence with State, Funding Recipient will subsequently convey to State, in the name of "The Sacramento and San Joaquin Drainage District, or successor entity" all real property interests using Grant Deed or Easement Deed,, as depicted in the Exhibits Binder.

- 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 22(a) of the Project 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 22(b) of the Project Agreement, State may provide Funding Recipient advanced funds to be counted toward the Project Agreement 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 Project 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, as depicted in the Exhibits Binder. 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, but is not limited to: 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 Funding Recipient's Program Manager that all costs and records are true and correct.

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Exhibit G EARLY PARTIAL RELEASE OF CERTAIN WITHHELD FUNDS

This Exhibit is intended to provide guidance regarding withholding of funds and the procedures Funding Recipients may use to request early partial release of certain withheld funds.

A. Funds Eligible for Early Partial Release

Several provisions of the Project Agreement authorize withholding.

- Paragraph 15(b) provides for advance payment of construction-related costs and the amount withheld is 10% of each advance payments. As invoices are received, the amount withheld is reduced to 5% in accordance with Section 17.
- Paragraph 22(b) provides for disbursements for Real Estate Capital Outlay Costs and the amount withheld depends upon what disbursement option is selected by Funding Recipient.
- Paragraph 22(c) provides for disbursements for Relocation Assistance Costs and the amount withheld for advance payments for such expenses is 25%.
- Paragraph 18 is the general withholding provision which provides for withholding of 5% from all payments, other than payments subject to the withholding rules set forth above.

The State will only consider requests for early partial release of funds that are being withheld pursuant to Paragraph 18. Although Real Estate Support Costs are withheld pursuant to Paragraph 18, the State will not grant requests for partial release of funds which are being withheld to cover the State's share of Real Estate Support Costs. The State also will not grant requests for early partial release of funds withheld under Paragraphs 22(b) and 22(c), which provide for withholding for Real Estate Capital Outlay Costs and Relocation Assistance Costs.

B. Circumstances under Which the State Will Consider a Request for Early Partial Release of Withheld Funds

1. **Timing:** The Funding Recipient may make a request for partial release of withheld funds for a Project Feature, Project Element, or Project. The State will only consider a request for early partial release for withheld funds if the Funding Recipient has made substantial progress towards completion and expects to complete work on the Project Feature, Project Element, or Project no later than 6 months after the date the request is made.
2. **Substantial Progress Toward Closeout:** The State will only consider a request if for the Project Feature, Project Element, or Project the Funding Recipient: (1) has provided an OMRR&R Manual and Project Construction Completion Report in accordance with Exhibit H, Sections II.A and II.B ; and (2) has made significant progress toward providing the required land acquisition final accounting packages required for completion of the land acquisition closeout process specified in Exhibit H, Section II.C.
3. **Amount Withheld:** The State will only consider a request if at the time the request is made the State is withholding the lesser of \$5 million or 5% of the updated estimates of State's share of Eligible Project Costs prepared in accordance with Section D.3 below.

C. Standards for Granting a Request for Early Partial Release of Withheld Funds

The State will grant a request for early partial release if, in the sole judgment of the State either:

1. Granting the request is in the best interests of the State because the withheld funds are needed for further work on the Project, or
2. Granting the request will not adversely affect the State because: (a) the Project has been substantially completed, (b) the amount of the withheld funds is significantly more than an updated estimate of State's

share of Eligible Project Costs required to complete the project, and (c) early partial release is not expected to materially affect the willingness of the Funding Recipient to fulfill its remaining obligations under the Project Agreement.

D. Procedures for Making a Request for Early Release of Funds

The Funding Recipient should accompany a request for early release of withheld funds with a report which:

1. Provides evidence that the Funding Recipient has met the prerequisites for making the request set forth in Section C above;
2. Provides evidence that the Funding Recipient has met the standards for early partial release of funds set forth in Section C above;
3. Provides updated estimates of Eligible Project Costs and the State's share of Eligible Project Costs, in the form of an updated budget for each Project Feature and Project Element and the Project on the whole, and
4. Indicates how much of the withheld funds the Funding Recipient wants released.

E. Action by the Department on Request for Early Release of Withheld Funds

If the State determines that the Funding Recipient has submitted a complete request and is eligible to make a request for early release of withheld funds, the State shall use best efforts to notify the Funding Recipient of the State's response to the request within ninety days of when the request is deemed complete.

Exhibit H PROJECT OR ELEMENT/FEATURE CLOSEOUT

I. GENERAL

Funding Recipient shall follow the proper procedures for Project closeout and /or Project Element or Feature closeout. Project closeout occurs after the last portion of a total Project is complete. Project Element or Feature closeout occurs after a discrete Element or Feature is eligible for closeout within the larger Project. Project Element or Feature closeout is also part of the total Project closeout at the end of the Project.

II. PROJECT CLOSEOUT

The Project Agreement Paragraphs applying to Project closeout are 15(d), 17, 22(d), 22(e), 24(a) and Exhibit B-8 and Exhibit F. Below is an outline of the Project closeout documents required, and their timelines, in order to closeout the Project or Project Elements or Features.

- A. Interim OMRR&R Manual (120 days prior to completion of the first Project Element. Time extension may be requested and will be considered on an individual basis.)
- B. Project Construction Completion Report - (within 90 calendar days of completion of all construction tasks. Time extension may be requested and will be considered on an individual basis.)
 - 1. Purpose and description of the Project
 - a. Actual work done
 - b. Schedule (actual vs. proposed)
 - c. Final documents
 - (i) Environmental documents (CEQA/NEPA), permits, and agreements
 - (ii) Budget discussion (Project cost summary) – The Final Statement of Costs will contain more detailed information
 - (iii) Project Agreement and Amendments
 - (iv) Final technical report (QA/QC, survey, etc.)
 - d. Reports/studies generated/utilized during the Project (hydrologic etc.)
 - e. As-built/record drawings – (3 sets hardcopy and 1 electronic format - .pdf on cd) in the form specified in the Exhibits Binder or as otherwise directed by the State
 - f. Photo documentation
 - (i) Pre-construction
 - (ii) Construction
 - (iii) Post-construction
 - g. Civil engineer certification of Project

- (i) Certification by a California Registered Civil Engineer that the pre- and post-project Levels of Protection are consistent with the agreed upon scope of work.
 - (ii) Separate sheet contained within the report with certification by a California Registered Civil Engineer that the Project was constructed in accordance with the approved work plan and any approved modifications thereto.
 - h. Division of Engineering ("DOE") inspection report
 - (i) Provide proof of submittal of Project Completion Report to DOE for review and approval.
 - (ii) Provide memo from DOE stating that the Project has been completed to the State's satisfaction.
- 2. Preliminary Statement of Costs
 - a. Complete account of invoices/costs from Funding Recipient. A list of and copies of all invoices showing:
 - (i) The date each invoice was submitted to State;
 - (ii) The amount of the invoice;
 - (iii) The date the check was received; and
 - (iv) The amount of the check. (If a check has not been received for the final invoice, then state this in this section).
 - b. List of all project invoices (final funds disbursement) on CD Including:
 - (i) Labor cost of personnel of agency/major consultant/sub-consultants;
 - (ii) Personnel, hours, rates, type of profession and reason for consultant, i.e. design, CEQA work, etc.
 - (iii) Construction cost information, shown by material, equipment, labor costs, and change orders;
 - (iv) A statement verifying separate accounting of Project disbursements.
 - (v) Breakdown of costs into Project management, design, environmental, construction, construction management, real estate, lease payments, relocation assistance, etc.
 - c. Summary of Project cost including:
 - (i) Accounting of the cost of Project expenditures;
 - (ii) All internal and external costs not previously disclosed; and
 - (iii) A discussion of factors that positively or negatively affected the Project cost and any deviation from the original Project cost estimate.

- d. If the Funding Recipient is requesting a lump sum payment for the State's share of remaining costs associated with the first three years of environmental mitigation and monitoring required by permits or by CEQA or NEPA that are expected to be Eligible Project Costs, a good faith estimate of the remaining costs and substantiation for the estimate.
- e. Total interest due to State from advances
3. Application for seeking Federal credit

A copy of the application filed for a determination of eligibility for federal credits or reimbursement and all correspondence with USACE relating to that application and information regarding the status of that application.
4. Assurance Agreement (fully executed)
5. Project Associated Work Report (if required because some segments are constructed with the Project but not funded by the DMP)
- C. Real Estate Project Close Documents
 1. Land Acquisition Final Accounting Package reviewed and approved
 2. Final conveyance documents accepted and recorded
- D. Final Statement of Costs (submitted within 60 days of when real estate project close-out documents are complete.)
 1. Updated version of Preliminary Statement of Costs provided pursuant to Section II.B.2 above.
 2. .

III. POST CONSTRUCTION PERFORMANCE REPORT

In anticipation of the report required per the OMRR&R Agreement and by AB 156 (9140/9650) each September 30 and ninety days after completion of the submittal of Project Completion Report:

- A. Outline of the reporting format
- B. First Annual Summary of the Operations

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Exhibit I

STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING GUIDELINES FOR FUNDING RECIPIENTS

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. List of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event of this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each project.

List of Documents for Audit

Internal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
 - a) Receipts and deposits
 - b) Disbursements
 - c) State reimbursement requests
 - d) Expenditure tracking of State funds
 - e) Policy, and Implementation Procedures on State funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans, or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

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

Accounting Records:

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

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

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

Project Files:

1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.