

**Meeting of the Central Valley Flood Protection Board
Jan 23, 2015**

**Staff Report
Flood System Repair Project
Project-specific Operation and Maintenance Agreements**

Item

Consider:

The Flood System Repair Project (FSRP) will assist local maintaining agencies (LMAs) to repair documented critical problems, all weather access roads, and proactive repairs to State Plan of Flood Control facilities protecting primarily rural areas of the Sacramento and San Joaquin River systems. FSRP guidelines require a repair project include specific operation and maintenance agreement between the LMA and the Central Valley Flood Protection Board (CVFPB) as an attachment to the project agreement.

The resolution before the Board requests the following:

1. Approve the form of the FSRP Operations and Maintenance agreement template;
2. Delegate authority to the Executive Officer to sign operation and maintenance agreements that relate to projects funded under FSRP; and
3. Approve the operation and maintenance agreements signed by the executive officer under previous delegation for FSRP projects.

Applicant

Department of Water Resources
3310 Watt Ave.
Suite 140
Sacramento, Ca 95821-9000
(916) 574-1404

Location

California central valley, the facilities of the State Plan of Flood Control.

Background

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. As one of the near-term priority actions, DWR has developed the Flood System Repair Project (FSRP) to assist local maintaining agencies in reducing flood risks by providing technical and financial support for the repair of documented critical problems to flood control facilities of the State Plan of Flood Control (SPFC) with a focus on non-urban areas of the Sacramento and San Joaquin River systems.

FSRP is being funded from a portion of \$3 billion authorized under the Disaster Preparedness and Flood Prevention Act of 2006 (Proposition 1E). FSRP repair projects are prioritized through a site eligibility and selection process that includes input from the LMAs and are cost-shared with eligible LMAs.

FSRP funds may be used to repair SPFC facilities up to their initial design level of performance and may include the following actions:

- Erosion Repair
- Levee repairs
- Crest/access road repairs
- Weir/flood relief structure repair
- Pumping plant repairs to maintain design capacity

On an annual basis, DWR compiles and updates a list of all potential repair sites from a variety of sources including United States Army Corps of Engineers inspection and evaluation data, DWR maintenance and evaluation program data, and input from LMAs. For each site that meets FSRP screening criteria, DWR will work with LMAs to evaluate the sites and remediation options, and will prioritize repairs for implementation.

For each eligible repair project, DWR will work with the LMA to establish a Project Agreement that will define the roles and responsibilities for each sponsor. Costs will be shared between DWR and the LMA consistent with State guidelines which include provisions for increased State share for disadvantaged communities and other incentives. Typical cost-share calculations result in a 10-20 percent local share of the total project cost.

For repairs to facilities maintained by an LMA, it is anticipated that the LMA will prepare the design, acquire necessary permits, and perform the repair with DWR oversight. However, should the LMA lack the resources, DWR may perform the repair on behalf of the LMA. DWR will perform repairs for damage to State-maintained facilities.

Operation and Maintenance Agreements:

For each of the proposed FSRP repair projects, a project agreement will be developed,. FSRP guidelines require an operation and maintenance agreement (O&M) between the Central Valley Flood Protection Board (CVFPB) and the LMA as part of the project agreement. The O&M agreement outlines the LMA assurances to the CVFPB that the LMA will continue to operate and maintain the SPFC facilities after the repairs are complete.

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

Proposed CEQA Findings

No CEQA action is required at this stage. For individual FSRP repair projects, the LMAs will be the CEQA lead. For the repairs requiring CVFPB encroachment permits and approvals, the LMAs will seek necessary approvals from CVFPB as a responsible agency.

Proposed CEQA Determination

Not applicable

Staff Comments

DWR is authorized and funded by the State of California pursuant to proposition 1E to carry out levee repairs in the facilities of the State Plan of Flood Control. As one of the near-term priority actions, DWR has developed the Flood System Repair Project (FSRP) to assist local maintaining agencies in reducing flood risks by providing technical and financial support for the repair of documented critical problems to flood control facilities of the State Plan of Flood Control (SPFC) with a focus on non-urban areas of the Sacramento and San Joaquin River systems. The proposed operation and maintenance agreements will allow DWR to execute the project agreements with LMAs to implements flood risk reduction projects.

Recommendation

Staff recommends that the board adopt Resolution No. 15 – 01 to,

1. Approve the form of the FSRP Operations and Maintenance agreement template;

2. Delegate authority to the Executive Officer to execute operation and maintenance agreements funded under FSRP; and
3. Approve the operation and maintenance agreements [ID with specificity which ones] executed by the executive officer under previous delegation for FSRP projects. [I would suggest this portion be explained in the staff report]

List of Attachments

FSRP Project Agreement Template, being used by DWR to fund the repair projects

FSRP Project Agreement Exhibits Template (Operation and Maintenance Agreement)

Flood System Repair Project Guidelines

[Note to Preparer:

These exhibit templates are intended to accompany the form of Critical Repairs Project Agreement.

Each contains notes, required inserts and optional contract clauses in brackets. 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.]

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, prepare may reference and include the Pre-Feasibility Cost Estimate Report in this exhibit.]

Directions: Funding Recipient shall prepare an Overall Work Plan, Overall Project Budget, and Overall Project Schedule. In preparing these documents, if the Project has separable elements, Funding Recipient shall define the Project Elements and provide separate budgets and schedules for each Project Element. If any Project Element can be further divided into Project Features, Funding Recipient shall define the Project Features and provide separate budgets and schedules for each Project Feature. If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the Overall Work Plan should include information regarding the scope of the Project-Associated Work and a budget and schedule for this work in accordance with Paragraph 23 of the Project Agreement.

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

The Overall Work Plan should be organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE

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 O&M 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, Flood System Repair 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 included 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 Flood System Repair 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 Flood System Repair 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

If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the work plans and reports described in this Exhibit should include information regarding the scope of the Project-Associated Work. The Funding Recipient will clearly distinguish between work included in the Overall Work Plan, which will be funded by the State under this Project Agreement, and Project-Associated Work, which will not be funded by the State under this Project Agreement. 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 Flood System Repair 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 Flood System Repair 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;
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project.

COST INFORMATION

- Listing showing costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the project and which of these costs are Eligible Project Costs;
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan as well as the Quarterly Work Plans;
- A list of any changes approved to the budget in accordance with 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.

TEMPLATE

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 ("O&M 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 _____, 2014 in view of the following circumstances:

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

for project 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].

2. State funding has become available for the Funded Project:
 - The voters of California approved Proposition 1E on November 7, 2006, making available bond funds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for the Flood System Repair Project ("FSRP").
 - The Funding Recipient has signed a Project Agreement. This Project Agreement is between the State of California Department of Water Resources and *[Funding Recipient]* for *[Funded Project Name]* ("Project Agreement").
 - The Project Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, according to the current Operation and Maintenance Manual(s) ("O&M") of Funded Projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.
 - The Department has agreed to enter into the Project Agreement on the condition that the Funding Recipient enters into this O&M Agreement under which the Board will oversee O&M for the Funded Project, as defined herein, for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Funded Project at this time, but in anticipation that federal funds may become available eventually:

- *[Note: include the following if the Project Agreement contained a requirement that the Funding Recipient seek a federal contribution. The Project Agreement requires the Funding Recipient to seek credit for the expenditures made under the Project Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.]*
 - The parties agree that this O&M Agreement may be superseded by one or more agreements acceptable to the USACE, the Department, and the Board that gives satisfactory assurances to the federal government, the Department, and the Board that the required local cooperation will be furnished in connection with the Funded Project.
4. The Funding Recipient already has responsibility for O&M for the existing portions of the Funded Project under California Water Code Section 12642 which states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this O&M Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this O&M Agreement that Funding Recipient will be responsible for O&M of the Funded 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 O&M of the Funded Project.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this O&M 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 Funded Project" means a completed portion of the Funded 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 Funded 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 O&M Agreement.

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

"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.

"O&M" means operation and maintenance of the Funded Project.

"O&M Agreement" means this agreement between the Board and the *[Insert name of Funding Recipient]* for O&M of the Funded 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 Agreement**” means that certain agreement between the Department and the *[Funding Recipient]* for *[FundedProject Name]* dated *[insert date]*.

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

“**Project Site**” means the location of the Funded Project.

“**State**” means the State of California, acting by and through the Board.

“**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 Funded Project.
2. To perform O&M for the Funded Project, including all mitigation features of the Funded 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 O&M for all Funded Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Funded Project and the flood control system of which the Funded Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
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 and damages, including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the Funded Project.
4. 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 Funded Project for which the State may be held liable and any claims based upon inverse condemnation.
5. If the Funding Recipient has failed or refused to perform the obligations set forth in this O&M 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 O&M Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of law, then the State may take appropriate actions under this O&M Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Funded Project to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a

work plan and present it to the Funding Recipient with instructions that if the Funding Recipient does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this O&M Agreement. No completion, operation and maintenance by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this O&M Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this O&M Agreement.

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

B. Specific Obligations Arising as a Result of the Funded 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 O&M of the Funded Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Funded Project and any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Funded Project and (2) shall annually update the Interim Operation and Maintenance Manual for the Funded 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 O&M in accordance with any revised version of the Operation and Maintenance Manual for the Funded 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 Funded 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 AB 5 (Wolk), 2007 California Statute 366 (to be codified at California Water Code § 9140(a)) that pertain to the Funded 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 O&M 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 Funded Project construction and O&M to the extent the Funding Recipient fails to comply with its obligations under this O&M 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 Funded Project contain hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this O&M Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate and maintain the Funded 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 Funded 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 Funded 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 Funded Project O&M 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 O&M Agreement. In performing the obligations called for in this O&M Agreement, the Funding Recipient shall notify the State when it initially retains, employs, or uses any agencies or firms. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this O&M Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

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

SECTION IV: Procedures for Reimbursing the State

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

SECTION V: Disputes

Before any party to the O&M Agreement may bring suit in any court concerning an issue relating to this O&M 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 O&M Agreement is the date it is signed by all parties. The O&M 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 O&M 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 O&M 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
Acting Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 151
Sacramento, CA 95821

With a copy to:

Mr. David J. W. Wheeldon
FSRP 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 O&M Agreement incorporates by reference the standard conditions that are included in Attachment D-1 to this O&M 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 O&M Agreement. This resolution is substantially the same as the draft resolution provided in Attachment D-2 to this O&M Agreement.

(Remainder of page intentionally left blank)

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

**Central Valley
Flood Protection Board**

By _____

Name _____

Title _____

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name _____

Title Asst. Chief Counsel

Date _____

Funding Recipient

By _____

Name _____

Title _____

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name _____

Title _____

Date _____

TEMPLATE

Exhibit D-1
STANDARD CONDITIONS

1. GOVERNING LAW: This O&M 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 O&M Agreement.
3. AMENDMENT: This O&M 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 O&M Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this O&M 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 O&M 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 O&M Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this O&M Agreement, and State may take any other action it deems necessary to protect its interests, after complying with Paragraph V of the O&M Agreement.
6. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Funded 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 O&M Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
7. NO THIRD PARTY RIGHTS: The parties to this O&M Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this O&M Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. OPINIONS AND DETERMINATIONS: Where the terms of this O&M Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. SUIT ON O&M AGREEMENT: Each of the parties hereto may sue and be sued with respect to this O&M Agreement.
10. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this O&M Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. SEVERABILITY: Should any portion of this O&M Agreement be determined to be void or unenforceable, such shall be severed from the whole and the O&M Agreement shall continue as modified.

12. **WAIVER OF RIGHTS:** None of the provisions of this O&M 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 O&M Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the O&M Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this O&M Agreement should Funding Recipient fail to perform the requirements of this O&M Agreement at the time and in the manner herein provided or in the event of a default under Paragraph 21 of the Project Agreement.
14. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the O&M Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST**
- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c) **Employees of the Funding Recipient:** Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
 - 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.
16. **WORKERS' COMPENSATION:** Funding Recipient affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this O&M Agreement and will make its contractors and subcontractors aware of this provision.
17. **AMERICANS WITH DISABILITIES ACT:** By signing this O&M Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
18. **NONDISCRIMINATION CLAUSE:** During the performance of this O&M Agreement, Funding Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital

status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

19. DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this O&M 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 O&M 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 O&M Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

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

20. UNION ORGANIZING: Funding Recipient, by signing this O&M Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this O&M Agreement. Furthermore, Funding Recipient, by signing this O&M Agreement, hereby certifies that:

- a) No State funds disbursed by this O&M 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 O&M Agreement to show those funds were allocated to that expenditure.
 - c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this O&M Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this O&M Agreement, such reports, data, information, and certifications as may be reasonably required by State. RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this O&M Agreement shall be in the public domain. Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this O&M Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
23. CHILD SUPPORT COMPLIANCE ACT: For any O&M Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:
- a) The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. PRIORITY HIRING CONSIDERATIONS: If this O&M Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the O&M Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code § 10353.
25. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this O&M Agreement, under penalty of perjury under the laws of State of California that Funding Recipient is in compliance with Public Contract Code section 10295.3
26. FUNDING RECIPIENT NAME CHANGE: Approval of the State's Project Manager is required to change the Funding Recipient's name as listed on this O&M Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
27. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Funding Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to

Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
(3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

TEMPLATE

Exhibit D-2: Draft Resolution

Resolution No. _____

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

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

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

(Agency, city, county, or other)

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

(Project title)

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

(Agency, city, county, or other)

to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of

(Project title)

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

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

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

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

of the _____
(Name of Funding Recipient)

on _____
(Date)

Affix
official
seal
here

Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Exhibit E DRAFT RESOLUTION ACCEPTING FUNDS

Resolution No. _____

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

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

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

- 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 O&M, 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 can not be justified through the appraisal process, will require prior approval by State's Program Management personnel in concurrence with the State's Real Estate Branch, Chief.

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

- 6) **MEMORANDUM OF SETTLEMENT:** 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 State cost share of total Project costs for approved acquisitions of necessary Project lands, easements, and rights-of-way. Payment to Funding Recipient for any lands, easements, or rights of way purchased, and relocations made prior to execution of the Agreement, and/or prior to final determination by State of the extent of necessary real estate requirements for the Project, is subject to adjustment during the final accounting of costs shared between State and Funding Recipient.

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

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 O&M 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 O&M 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. O&M Agreement (fully executed)
 - 5. Project Associated Work Report (if required because some segments are constructed with the Project but not funded by the FSRP)
- 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. If the Funding Recipient has received an increased cost share for the Supplemental Benefits objectives of habitat, open-space, recreation, or a combination thereof, a summary of the payments made by the Funding Recipient and any adjustments made in accordance with the process set forth in Exhibit H-1.

III. POST CONSTRUCTION PERFORMANCE REPORT

In anticipation of the report required per the O&M 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

★

Exhibit H-1

ACCOUNTING FOR CONTRIBUTIONS TOWARD CERTAIN SUPPLEMENTAL BENEFITS

[To be completed for Projects which claim an increased State cost-share for contributions to the habitat, open-space, recreation, or combination objectives]

At the time of execution of this Project Agreement the State's cost-share reflects an increase for contributions toward certain Supplemental Benefits. The Funding Recipient has provided a Supplemental Benefits Baseline Report ("Baseline Report"). This Baseline Report includes:

- An allocation of Eligible Project Costs included in the budget which is part of the Overall Work Plan which shows the Total Project Cost and which costs are to be incurred to: (1) attain the desired Level of Protection; (2) provide mitigation required by permits or by CEQA or NEPA; or (3) attain Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- A list of requirements that must be met by the Funding Recipient in order to establish that the Funding Recipient is entitled to an increased cost-share for the Supplemental Benefits claimed by the Funding Recipient. *[Requirements shall be determined by the State on a case-by-case basis before the Project Agreement is signed.]*

The Funding Recipient has indicated that it will make contributions in excess of the [5%*] threshold for contributions toward the habitat, open-space, recreation, or combination objectives. Specifically, the [5%] threshold for the Project is _____ *[insert dollar amount for [5%*] of Total Project Costs]* and the Funding Recipient has indicated that contributions will be made toward the attainment of the *[insert name of objective - i.e. habitat, open-space, recreation, or combination]* objectives in the amount indicated:

[Insert dollar amounts for contribution Funding Recipient indicated it would make as part of the Cost-Share Recommendation and Report submitted with the Application in order to qualify for an increased cost-share for providing a Supplemental Benefit.]

- Before close-out of a Project for which contributions were made, the Funding Recipient shall provide a Supplemental Benefits Final Report which shall provide information regarding the actual contributions made. Specifically, the Final Report shall include, at a minimum: A discussion of the difference between the actual and planned Eligible Project Costs included in the Baseline Report which were allocated to attainment of Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- A discussion of the difference between the actual and planned Eligible Project Costs included in the Baseline Report.
- Copies of invoices for all Eligible Project Costs allocated to attain Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- Proof that the Funding Recipient has met the requirements for eligibility for additional cost-sharing stated in the Baseline Report.

If the contributions for habitat, open-space, recreation, or combination objectives are not the same as those in the Baseline Report, adjustments to the cost-sharing formula set forth in Paragraph 8 (a) of the Project Agreement shall be made according to the following rules:

- For contributions of less than 5%, the State's cost share percentage shall be determined based upon no contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 5% or more and less than 10%, the State' cost share percentage shall be determined based upon a 5% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.

- For contributions of 10% or more and less than 15%, the State' cost share percentage shall be determined based upon a 10% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 15% or more and less than 20%, the State' cost share percentage shall be determined based upon a 15% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 20% or more, the State' cost share percentage shall be determined based upon a 20% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.

The Funding Recipient shall also provide a plan for reconciliation of accounts and financial closeout which reflects this retroactive change in the State's cost-share.

If a Funding Recipient fails to provide the Supplemental Benefits it agreed to complete in exchange for a higher State cost share under Paragraph 8, and the Funding Recipient refuses to return any excess payment, the State may withhold funds from future scheduled payments to the Funding Recipient, consistent with Paragraphs 19 and 20 of this agreement, and take other appropriate actions.

An increase in the State's cost-share shall be subject to the requirements of Paragraph 30 of the Project Agreement.

*[*Note: This Exhibit assumes that the Funding Recipient has indicated that it will make a contribution to only one objective and only for an amount that exceeds the 5% threshold. If the Funding Recipient intends to make a contribution which exceeds the 10%, 15%, or 20% thresholds, the wording of this Exhibit shall be modified accordingly. To the degree that the State's cost share percentage is based on State Transportation Facilities or State Water Supply Facilities, then the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives would not be available due to the 70% cap on the State cost share percentage attainable by Supplemental Benefits. Similarly, the 90% cap on the State cost share percentage may limit the availability of the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives.]*

Exhibit I

STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING MATCH 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 funded 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) Guidelines, policy, and 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.

Funding Match Documentation

Funding Match (often referred to as cost share) consists of non-State funds, including in-kind services. In-kind services are defined as work performed (i.e., dollar value of non-cash contributions) by the Funding Recipient (and potentially other parties) directly related to the execution of the funded project. Examples include volunteer services, equipment use, and use of facilities. The cost of in-kind service can be counted as funding match in-lieu of actual funds (or revenue) provide by the Funding Recipient. Other funding match and in-kind service eligibility conditions may apply. Provide below is guidance for documenting funding match with and without in-kind services.

1. Although tracked separately, in-kind services shall be documented and, to the extent feasible, supported by the same methods used by the Funding Recipient for its own employees. Such documentation should include the following:
 - a. Detailed description of the contributed item(s) or service(s)
 - b. Purpose for which the contribution was made (tied to project work plan)
 - c. Name of contributing organization and date of contribution
 - d. Real or approximate value of contribution. Who valued the contribution and how was the value determined? (e.g., actual, appraisal, fair market value, etc.). Justification of rate. (See item #4, below)
 - e. Person's name and the function of the contributing person
 - f. Number of hours contributed
 - g. If multiple sources exist, these should be summarized on a table with summed charges
 - h. Source of contribution if it was provided by, obtained with, or supported by government funds
2. Rates for volunteer or in-kind services shall be consistent with those paid for similar work in the Funding Recipient organization. For example, volunteer service of clearing vegetation performed by an attorney shall be valued at a fair market value for this service, not the rate for professional legal services. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market. Paid fringe benefits that are reasonable, allowable and allocable may be included in the valuation.

3. Funding match contribution (including in kind services) shall be for costs and services directly attributed to activities included in the Funding Agreement. These services, furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as in-kind if the activities are an integral and necessary part of the project funded by the Funding Agreement.
4. Cash contributions made to a project shall be documented as revenue and in-kind services as expenditure. These costs should be tracked separately in the Funding Recipient's accounting system.

TEMPLATE

[Note to Preparer:

This is the form of C Project Agreement.

It contains notes, required inserts and optional contract clauses in brackets. 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.]

TEMPLATE

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]

FUNDED UNDER THE
FLOOD SYSTEM REPAIR PROJECT
OF

THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

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Exhibits

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Exhibit C, Quarterly Work Plan and Report Formats
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Exhibit D-1, Standard Conditions
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Agreement *[insert #]*
[Funding Recipient's Name]

Exhibit F, Land Acquisition Process Requirements

Exhibit G, Early Partial Release of Certain Withheld Funds

Exhibit H, Project or Element/Feature Close-Out

Exhibit H-1, Accounting for Contributions toward Certain Supplemental Benefits

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

TEMPLATE

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 THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

(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.

"Agreement to Assume Responsibility to Operate and Maintain" means an agreement entered into by the Funding Recipient, if applicable, with an appropriate legal entity to assume responsibility for Operation and Maintenance on terms similar to those in Exhibit D to this Project Agreement in accordance with the requirements of Paragraph 25.

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

"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 Total Project 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 the Project Agreement, and its successors and assigns.

"Guidelines" means the Guidelines for the Flood System Repair Project (FSRP) which govern the process by which Department reviews and selects FSRP repair projects to fund, and 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 Costs" means ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

"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.

"O&M" means operation and maintenance of the Project.

"Operation Cost" means direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses.

"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 O&M Agreement.

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

"Project" means the project described in the Overall Work Plan.

"Project-Associated Work" means work on a Project that is associated with the work to be done under the Overall Work Plan that is not funded under this Project Agreement such as work that provides Supplemental Benefits not necessary for flood protection purposes.

"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 and the cost of any Project-Associated Work.

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

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

"Project Real Estate Plan" 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.

"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.

"Real Estate Support Costs" means reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney's services fees, engineering services fees, court costs, and title and closing costs.

"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).

"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).

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

"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.

"Supplemental Benefits" means benefits associated with a Project that are not required as mitigation for the Project and that meet multipurpose objectives related to habitat, open space, recreation, disadvantaged areas, and/or State facilities. Supplemental Benefits may make the Project eligible for an increased State cost share.

"Total Project 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 Total Project 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 a Flood System Repair Project pursuant to Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the California Public Resources Code. Funds may be used only as provided in this Project Agreement for Eligible Project Costs for the Project described in Exhibit A-1, Overall Work Plan.
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. PROJECT COST. The reasonable cost of building out the Project is estimated to be *[insert cost amount]*.
5. LIMIT ON STATE FUNDS. Pursuant to the California Disaster Preparedness and Flood Prevention Bond Act of 2006 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 for the State cost share an 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 calculated in accordance with the cost sharing 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. FUNDING RECIPIENT'S COST. Funding Recipient agrees to fund the difference, if any, between the actual Project costs and the amount paid by the State for its share of Eligible Project Costs.
7. ELIGIBLE PROJECT COSTS. Funding Recipient shall only 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 Department has issued an Eligibility Notice to the LMA for the project to be performed pursuant to the Project Agreement. The Guidelines provide a summary of the costs which are considered eligible or non-eligible project costs.
8. COST SHARING BY THE STATE AND FUNDING RECIPIENT. *[Note: Funding Recipient will submit a cost-share recommendation incorporating the Department Cost Share Formula and/or enhanced cost-share provisions as defined in Section 4.4.2 of the Guidelines as one of the required LMA documents to support the Project Agreement. Department will review that recommendation, accept or change it, and finalize it with the Funding Recipient. Before this Project Agreement is executed, the final cost share formula should be memorialized here. This paragraph provides guidance as to how those agreements should be memorialized, but given the complexities of the cost-share approach, this paragraph should be granted specific attention. The Department cost share formula includes restrictions on the use of other State funds to meet local agency cost share which may be included in the Project Agreement where the preparer feels emphasis is warranted.]*
 - a) The State will pay *[insert #]* percent (*[insert #]*%) of Eligible Project Costs. Funding Recipient will be responsible for paying the balance. The Funding Recipient's cost share shall be consistent with the Guidelines for Establishing Local Agency cost-Sharing Formulas for Flood Programs and Projects and enhanced cost share provisions of the FSRP Guidelines unless otherwise identified in this paragraph

[Note: Percentage to be determined by analyzing whether the State's cost-share should be increased because the Project has Supplemental Benefits.]

[For Projects including cost share provisions based on Supplemental Benefits, include the following paragraph:]

The Funding Recipient's cost-share is based on the Funding Recipient's reasonable expectations at the time the Project Agreement is signed concerning the Supplemental Benefits the Project will provide toward the habitat, open-space, recreation, and combination objectives. If there is a change between the expected and actual financial commitment toward attainment of the habitat, open-space, recreation, or combination objectives, the State's cost-share may be subject to adjustment as provided for in Exhibit H-1. At the time the Project Agreement is signed and before close-out for the Project, Element, or Feature, Funding Recipient shall provide the information required in Exhibit H-1 regarding planned and actual expenditures toward the habitat, open-space, recreation, or combination objectives. If there is a difference between the amount of the originally expected contributions and those actually made, a retroactive adjustment of the cost-sharing formula is required under the terms of Exhibit H-1, the Parties shall make the adjustments before close-out of the Project, Element, or Feature in accordance with the provisions of Exhibit H-1.]

9. *RESERVED [If State is requiring LMA pursuit of federal credit and reimbursement for the Project, insert the Paragraph 9 and delete the section title "RESERVED":*

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 O&M 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.]

10. **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.

11. **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) O&M. 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 O&M. 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.

12. 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 O&M in accordance with applicable provisions of the law.
13. 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 California Disaster Preparedness and Flood Prevention Bond Act of 2006 and:
 - a) Funding Recipient has provided a copy of a resolution adopted by its governing body accepting the Funds, and designated a 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 provides assurance that O&M Agreement requirements as provided for in Paragraph 25 of this Project Agreement will be adhered to as outlined.
 - c) Funding Recipient has demonstrated compliance with (i) all applicable requirements of the CEQA and NEPA and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements.

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

- 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) *[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.]*

14. 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.

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

- a) 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 FSRP 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. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs. The total credit issued may not exceed the LMA's share of the total project costs. The total credit plus Department's share of the total project costs may not exceed 95 percent of the total project cost.
- 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) its cost share 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.]*

16. 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) *[For Projects including cost share provisions based on Supplemental Benefits, include the following subparagraph: If the Funding Recipient is receiving an increased cost share because the Project provides Supplemental Benefits relating to habitat, open-space, or recreation, the Final Statement of Costs shall also provide information sufficient to demonstrate that the Funding Recipient's commitment to provide Supplemental Benefits has been fulfilled.]*
- c) The State will review each Quarterly Work Plan and each Statement of Costs to determine whether claimed costs are, in the opinion of the State, Eligible Project Costs and whether the Funding Recipient has provided adequate information to verify that claimed expenses were incurred.
- d) State may reject a Statement of Costs if: (1) it is submitted without signature; (2) it is submitted under signature of a person other than Funding Recipient's Program or Project Manager; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 16(g). State will notify Funding Recipient of any Statement of Costs so rejected, and the reasons therefore.

- e) A Statement of Costs containing a mathematical error will be corrected by State, after 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.
- f) State will notify Funding Recipient by mail, whenever, upon review of a Statement of Costs, State determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this 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.

- g) 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.
 - h) 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).
17. **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.
18. **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 the funding recipient has executed an Operation and Maintenance 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.

When a Project is ready for financial close-out, the Funding Recipient may request a lump sum payment for the State's share of any remaining costs for the first three years of environmental mitigation and monitoring costs required by permits, CEQA, or NEPA that are expected to be Eligible Project Costs. If the Funding Recipient makes such a request, the Funding Recipient shall supply a good faith estimate of the remaining costs and substantiation for the amount claimed and the State may, in its sole discretion, make a lump sum payment to cover the remaining costs.

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.

19. **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.

20. **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.

21. **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 compete 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.

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

Funding Recipient's Project Real Estate Plan shall be based on, at a minimum, 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 State's cost share for Real Estate Capital Outlay Costs upon the Funding Recipient's completion of all land acquisition requirements as set forth in Exhibit F. The second approach, set forth in subpart 2 below, provides a mechanism whereby the State will advance funding to the Funding Recipient for real estate capital outlays prior to completion of all land acquisition requirements set forth in Exhibit F. Under this approach, Funding Recipient is not guaranteed to receive 100% of its eligible Real Estate Capital Outlay Costs. The final approach, set forth in subpart 3 below, provides the process under which the State will advance Real Estate Capital Outlay Costs and, to the extent required by law, any Real Estate Support Costs for condemnation proceedings. Because the Funding Recipient may need to condemn only some of the parcels required to complete the Project, the State anticipates the Funding Recipient may utilize more than one of the three disbursement approaches. 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 its cost share of real estate capital outlays to Funding Recipient.*
 - 2) *Advancement of State Cost Share Prior to Completion of Land Acquisition Requirements.* *If requested by Funding Recipient, the State will advance fifty percent (50%) of the State cost share of the appraised fair market value of the property after State completes its preliminary review 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 State cost share of the appraised fair market value of the property. The State will reimburse Funding Recipient for the remaining twenty-five percent (25%) of the State cost share 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 State cost share for other project expenses not yet reimbursed to Funding Recipient. If the State cost share of the approved fair market value is higher than the State cost share of the amount outlined for capital outlays in Funding Recipient's Project Real Estate Plan, the State will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the 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 State cost share.*

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

After all other appraisals, 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 State cost share of the Court approved total just compensation for the parcel minus what has been advanced before. Provided a Court Order approving the condemnation of the property has been made, no additional review 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 State cost share of the Court approved total just compensation is higher than the State cost share of the amount outlined for the property acquisition in Funding Recipient's Project Real Estate Plan, the Department will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the 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 State cost share 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 State cost share 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.]

23. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT. [Note: Text below reflects anticipated needs for most FSRP 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: An 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 O&M Plan revisions under Paragraph 25 or include project-specific, include the following paragraph: 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 O&M Agreement.]*
- f) Project-Associated Work: The work plans and reports described in paragraphs (a) through (e) above shall include information regarding any Project-Associated Work, which is work on projects that are associated with the work to be done under the Overall Work Plan, but will not be funded under this Project Agreement. The State will determine the extent of the information required concerning Project-Associated Work on a case-by-case basis in consultation with the Funding Recipient.
- g) Compliance with Executive Order S-02-07: At the sole discretion of the State, the State may modify the requirements for preparation and submittal of work plans and reports called for in this Project Agreement in order to improve administration of the FSRP 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.

24. RESERVED *[For projects which require O&M 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 O&M agreement attached hereto as Exhibit D.]*

25. OPERATION AND MAINTENANCE.

Funding Recipient agrees that it will execute an agreement with the Central Valley Flood Protection Board, or a successor thereto, substantially in the form of Exhibit D to this Project Agreement, which sets forth the obligations of the Funding Recipient to do the O&M work for the Project and the associated federally authorized project. Refusal of Funding Recipient to execute an O&M Agreement substantially in the form of Exhibit D or to do the O&M work in accordance with this Exhibit D 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 O&M of the associated federally authorized project, the Funding Recipient also represents and warrants:

- a) Funding Recipient has submitted a fully executed and legally binding Agreement to Assume Responsibility for O&M between the Funding Recipient and each appropriate legal entity which requires each such legal entity to also seek to enter into an O&M agreement with the Central Valley Flood Protection Board, or any successor thereto, that is substantially in the form of Exhibit D to this Project Agreement. Each Agreement to Assume Responsibility for O&M shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.
- b) Funding Recipient will comply with the terms of this Agreement to Assume Responsibility for O&M.
- c) In the event that the counter-party to the Agreement to Assume Responsibility for O&M fails to comply with the terms of the Agreement to Assume Responsibility for O&M, Funding Recipient agrees that it shall continue to have responsibility for O&M.

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.

Funding Recipient and any other legal entity that has signed an Agreement to Assume Responsibility for O&M must execute a legally binding agreement with the Central Valley Flood Protection Board that sets forth the Funding Recipient and other responsible legal entity's obligations to perform the O&M work for the Project not later than the point at which 25% of the Project funds have been extended; said requirement shall be a condition precedent as further defined in Paragraph 18.

Funding Recipient and any other legal entity that has signed an Agreement to Assume Responsibility for O&M agrees to control all encroachments on project facilities to be repaired or otherwise modified

under this Project Agreement and will not allow new encroachments on those facilities without approval of the Central Valley Flood Protection Board.

If the Funding Recipient or any other legal entity that has signed an Agreement to Assume Responsibility for O&M has failed or refused to perform the obligations set forth in this Project Agreement or the O&M manual provided under Paragraph 25(b) and that failure or refusal constitutes, in the opinion of the federal government or the State, a threat to the continued ability of that functional portion of the Project to perform in a manner necessary to provide its designed level of flood protection, then the State may take one or both of the following actions:

Upon 30 days written notice, State may enter the property and perform the necessary work either with State resources or by contract. The Funding Recipient or other legal entity as defined above will reimburse the State for the costs of performing the work. Notwithstanding the ability of the State to enter the property and perform the necessary work under Paragraph 25, State may seek a court order requiring the Funding Recipient or other legal entity as defined above to perform its contractual obligations to do such work and/or pay Department's costs for doing such work.

[for projects that include substantial modifications to SPFC warranting revision to the LMA's O&M Manual, insert the following paragraph:

Funding Recipient agrees to provide State an acceptable detailed Interim Standard O&M 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 O&M 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.]

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

26. 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 O&M 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 these Guidelines, including any payments to the Department of Industrial Relations under Labor Code Section 1771.3.

27. PROGRAM AND PROJECT MANAGERS. Either party may change its Program or Project Manager upon written notice to the other party.
- a) 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:

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

- b) Funding Recipient's Program Manager: Funding Recipient's Program Manager shall be *[insert job title]*. Funding Recipient's Program Manager shall be the Agency's representative for the administration of the 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.)]

28. 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.

29. INCORPORATION OF EXHIBITS. This Project Agreement incorporates:

Exhibit A, Overall Work Plan, Budget, and Schedule
Exhibit B, Standard Conditions
Exhibit C, Quarterly Work Plan and Report Formats
Exhibit D, Operation and Maintenance Agreement
Exhibit E, Draft Resolution Accepting Funds
Exhibit F, Land Acquisition Process Requirements
Exhibit G, Early Release of Certain Withheld Funds
Exhibit H, Project or Element/Feature Close-Out
Exhibit H-1, Accounting for Contributions toward Certain Supplemental Benefits
Exhibit I, State Audit Document Requirements and Funding Match Guidelines for Funding Recipients

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

30. 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.

31. MODIFICATION OF PROJECT-ASSOCIATED WORK. The Funding Recipient shall notify the State if it proposes to make a change to Project-Associated Work described in the Overall Work Plan in Exhibit A that will cause a material change to cost, cost-sharing, effectiveness or schedule of the work that is being funded under this Project Agreement. Failure to comply with this provision will be considered an event of default under this Project Agreement.

32. INDEPENDENT REVIEW.

[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 total Project 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 total Project 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.]

33. 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 California Disaster Preparedness and Flood Prevention Bond Act of 2006 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_____

Title____ Asst. Chief Counsel _____

Date_____

Funding Recipient

By_____

Name_____

Title_____

Date_____

Approved as to Legal Form
And Sufficiency

By_____

Name_____

Title_____

Date_____

GUIDELINES

Flood System Repair Project

**Authorized Under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E),
and the Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84)**

July 2013



DEPARTMENT OF WATER RESOURCES
Division of Flood Management
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821

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Acronyms and Abbreviations

Term	Description
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CWC	California Water Code
DWR	Department of Water Resources
FSRP	Flood System Repair Project
LMA	local maintaining agency
NEPA	National Environmental Policy Act
O&M	operations and maintenance
SPFC	State Plan of Flood Control

Acronyms and Abbreviations

Term	Description
USACE	U.S. Army Corps of Engineers
USC	U.S. Code

1.0 INTRODUCTION

1.1 Goals and Objectives

The passage of Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006 and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 authorized the Department of Water Resources (DWR) to make funds available for, among other things, projects for repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, channels, and other facilities of the State Plan of Flood Control (SPFC) (See Section 1.2). The Central Valley Flood Protection Board adopted the 2012 Central Valley Flood Protection Plan on June 29, 2012. The Central Valley Flood Protection Plan is a critical document to guide California's participation in managing flood risk along the Sacramento and San Joaquin River systems. The Central Valley Flood Protection Plan proposes a State Systemwide Investment Approach for sustainable integrated flood management in the areas protected by SPFC facilities. Under the Flood System Operation and Maintenance Program, the State Systemwide Investment Approach sets the near-term priority for implementing repair of erosion sites, known and documented critical problems, and providing all-weather access for effective emergency response capability. DWR has developed the Flood System Repair Project (FSRP) to assist the local maintaining agencies (LMAs) responsible for maintaining facilities of the SPFC. For the purposes of these guidelines, LMAs may include levee districts, cities, counties or other public agencies with maintenance responsibilities for SPFC facilities, as well as maintenance areas where the state has maintenance responsibilities. The FSRP is funded from a portion of funding authorized for the evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the SPFC under § 5096.821 of the Public Resources Code.

To ensure that funds are spent in accordance with Proposition 1E requirements, and are consistent with the State System-Wide Investment Approach detailed in the 2012 Central Valley Flood Protection Plan, the FSRP incorporates prioritization of funded projects to focus on repair of performance problems that are critical, serious, or that may impede flood fight capabilities. A critical problem is defined as damage to a flood protection facility that would reasonably be expected to fail during the course of a single flood season or single high water event. A serious problem is defined as damage to a flood-protection facility such that the facility is approaching a state of failure but is not likely to fail during the next flood season or single high-water event. The FSRP also provides for proactive repairs that lead to sustainable operations and maintenance (O&M) practices. Proactive repairs will address small damages that may not qualify as critical or serious, but are worsening rapidly, have the potential to become critical, and that can be designed and constructed by the LMA.

Proposition 1E requires that funds are expended while:

- Securing the maximum feasible amounts of federal and local matching funds and ensuring prudent and cost-effective use of the funds to the extent that doing so does not prohibit timely implementation of disaster preparedness and flood prevention projects.
- Prioritizing selection and project design to achieve maximum public benefits from the use of the funds.

In support of these principles, the objectives of the FSRP are:

- Repairing critical problems to SPFC facilities in partnership with the LMAs.
- Helping LMAs proactively repair small erosion sites that could deteriorate to pose a critical threat that are within the overall scale of the LMAs' maintenance program and can reasonably be performed by the LMA, but fall outside of activities considered to be routine maintenance as defined in Appendix A.

Repair of critical problems is needed to advance the primary 2012 Central Valley Flood Protection Plan goal of improving flood risk management. The intent of the repair of proactive sites under the FSRP is to help LMAs prevent these problems from becoming critical, thus reducing repair costs and enhancing the long-term sustainability of O&M programs. The FSRP supports the Central Valley Flood System Conservation Framework goals by incorporating habitat enhancement components with avoiding environmental impacts, mitigating onsite or nearby for unavoidable impacts, and coordinating with identified restoration projects as necessary to ensure that selected repair sites are consistent with the State Systemwide Investment Approach and minimize foreclosing future environmental enhancement opportunities. FSRP cost sharing provisions encourage LMA participation in habitat improvements and participation in corridor management and multi-benefit projects.

1.2 FSRP Definition

The FSRP applies to projects involving repair of damaged SPFC facilities maintained by LMAs or by DWR, which may include levees, channels, and related flood control structures as further defined in Section 3.2. An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities that is qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as a sponsor provided the LMA representing the SPFC facility is a member of the joint powers authority or other entity, and accepts responsibility for maintaining the future facility to be repaired.

Working collaboratively with LMAs, DWR will first identify potential repair sites by:

- Developing a list of past performance problems on SPFC facilities from the available inspection and reporting programs.
- Collecting engineering data and additional information from LMAs and other relevant sources to classify past performance problems sites by severity of damage and potential impact to lives and property.
- Screening potential repair sites against administrative criteria to eliminate repairs that are inconsistent with the State System-Wide Investment Approach under the 2012 Central Valley Flood Protection Plan, or that may be addressed under other state, local or federal programs.

DWR will prioritize the screened sites and notify LMAs of sites that are eligible for repair. If an LMA agrees to sponsor an eligible repair site, DWR will enter into a Project Agreement with the LMA, which will define the roles and responsibilities of the LMA and DWR and the cost-share provisions (Appendix B). In the case of repairs to SPFC facilities maintained by DWR, DWR will perform the repairs on behalf of a maintenance area.

Subject to an executed Project Agreement and DWR's approval, the LMA or DWR will prepare environmental documentation, collect engineering data, provide design services, obtain required property rights, and procure, execute, administer, and manage the construction contract with DWR review and oversight. DWR will be responsible for implementing projects at facilities identified in California Water Code (CWC) § 8361 and those maintained by DWR pursuant to CWC 12878 et seq.

1.3 About These Guidelines

These FSRP Guidelines (Guidelines) govern the process by which DWR reviews and selects FSRP repair projects to fund, and the resulting implementation process. Where a project receiving FSRP funding is governed by specific laws, these Guidelines only apply to the extent they are consistent with those specific laws. These Guidelines concern the site eligibility and selection process that will be used to disburse funds, the agreements that the LMA sponsors will be required to sign, and the way in which these agreements will be administered. These Guidelines may be amended as described in Section 6.2.

1.4 Funding

Up to \$150 million Proposition 1E funds may be allocated to the FSRP through fiscal year 2017. FSRP repair projects will be cost-shared with eligible LMA sponsors. Projects will be DWR-directed as defined in these Guidelines. At its discretion, DWR may also opt to select projects by competitive solicitation under a project solicitation package process; however, such a process will be defined at a later date as a separate set of guidelines, or will be revisions to these Guidelines.

The minimum state cost-share percentage will be based on the latest edition of DWR's Division of Flood Management Guidelines For Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects (DWR, 2010). The FSRP includes additional cost-share enhancements based on the LMA's O&M and emergency response preparedness performance, as described in Section 4.5.2. The state cost-share percentage for FSRP repair projects will range from 50 percent to 90 percent based on application of these cost-share provisions. The maximum state cost-share amount per project will be \$5,000,000.

Implementation of any or all FSRP repair projects is subject to future funding restrictions. FSRP eligibility criteria, requirements, or procedures may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion. Such changes may be required as a result of state or federal legislative or administrative actions (i.e., actions associated with passage of the annual state budget or other legislation).

1.5 FSRP Limitations

The FSRP is limited to facilities of the SPFC maintained by LMAs or by DWR, as defined in Public Resources Code § 5096.805(j):

...the state and federal flood control works, lands, programs, plans, conditions and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of non-federal cooperation to the United States, which shall be updated and compiled into a single document entitled "The State Plan of Flood Control."

In addition, the FSRP cannot be accessed to fund routine maintenance activities performed under an LMA's O&M program or repair projects that increase a facility's level of protection to a higher design level of performance or original design intent. These limitations are described in greater detail in Section 3.3.

2.0 FLOOD SYSTEM REPAIR PROJECT IMPLEMENTATION PROCESS

This section describes the process by which DWR will implement the FSRP. Section 2.1 summarizes the process by which potential FSRP sites are identified, classified, and prioritized. Section 2.2 describes the process by which DWR will solicit sponsorship by LMAs and negotiate Project Agreements with the sponsoring LMA. As the overarching objective of the FSRP is to fund repairs, for facilities maintained by LMAs, the process has been designed to include close collaboration and to address critical past performance problems while supporting broader 2012 Central Valley Flood Protection Plan goals. For facilities maintained by LMAs, funding and implementation of repair projects under the FSRP are contingent upon the execution of a Project Agreement between DWR and an eligible LMA sponsor. Figure 2-1 summarizes the process. The repair of facilities maintained by DWR (identified in CWC § 8361 and pursuant to CWC § 12878 et seq) will be implemented by DWR and will not require Project Agreements. Provisions for Project Agreements are provided in Appendix B.

2.1 FSRP Site Selection Process

2.1.1 Compilation of Potential Repair Sites

On an annual basis, DWR will compile a list of potential repair sites from available sources, which may include the following:

- Annual inspections of SPFC levees, structures, channels, and other flood management facilities performed in accordance with the Code of Federal Regulations (33 CFR § 208.10) and documented in an annual Inspection Report of the Flood Control Project Maintenance and Repair.
- Annual inspections or periodic inspections conducted by USACE under its Levee Safety Program.
- Information provided by LMAs
- Flood facility assessments conducted by DWR under other programs, most notably the urban and non-urban levee evaluations being performed by DWR in support of the Central Valley Flood Protection Plan.

DWR will coordinate with LMAs to gather available information regarding potential repair sites. LMAs are encouraged to work with FSRP management to ensure that known sites have been captured as part of the compilation step. If a new potential repair site is identified after the compilation step, DWR will separately evaluate the site for potential addition as an eligible repair.

Data from available sources will be examined for past performance problems. The past performance problems will be reviewed to eliminate instances related to general compliance or routine maintenance.

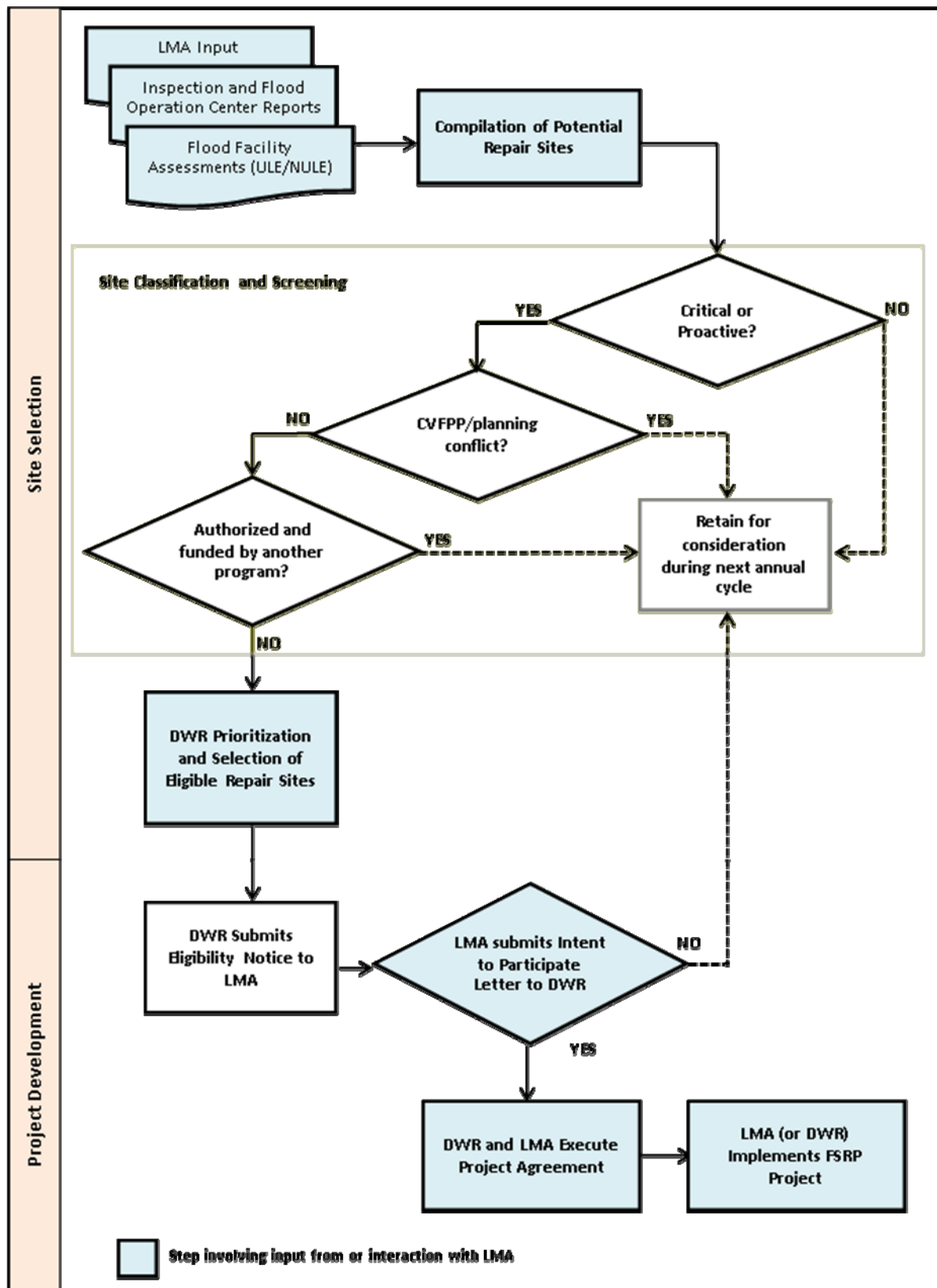


Figure 2-1. FSRP Process.

2.1.2 Classification of Potentially Eligible Repair Sites

2.1.2.1 Critical or Serious Site Classification

DWR will review available engineering data, coordinate with LMAs to conduct reconnaissance-level field assessments, and classify sites by severity of damage as critical, serious, or other. Each classification has an individual ranking method that will determine whether the site represents critical or serious problem as defined in Appendix A.

Sites classified as critical, based on these definitions, will be identified as potentially eligible sites. Sites will be prioritized based on maximum flood risk reduction. If other factors are deemed equal, critically damaged facilities will receive funding in preference to seriously damaged facilities.

Sites not found to be critical will not be eligible, but may be retained for reassessment during subsequent evaluation and ranking under the FSRP. For each potentially eligible critical FSRP site, DWR will prepare a summary alternative repair analysis, including:

- An analysis of the use of a setback levee.
- A preliminary estimate of all costs, opportunities, and constraints.
- A real estate and environmental permitting needs assessment.
- A determination of the affected area in the event of a failure of the facility.
- An estimate of benefits.

An evaluation of these factors will result in a list of potentially eligible repair sites, with:

- Preferred repair alternatives.
- An engineer's pre-design estimate.
- A project schedule and budget.
- A summary of anticipated mitigation and environmental compliance and regulatory permitting requirements.
- A summary of acreages and potential real estate needs for the preferred repair and potential utility and encroachment impacts.

The scope of this effort is intended to support determination of site eligibility and the prioritization of repair sites. For sites that proceed to a Project Agreement, the LMA or DWR, per the terms of the Project Agreement, will be responsible for the design and permitting needs as described later in these Guidelines.

2.1.2.2 Proactive Site Classification

Each potentially eligible FSRP site is also examined to determine whether its condition qualifies for construction as a Proactive Repair project, which is addressed differently from other eligible repairs. Proactive Repairs are defined as small problems that are worsening rapidly and that can be designed and constructed by the LMA or DWR. Implementation of

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such proactive repair projects allows for efficient repair of sites that may not otherwise be eligible but would be significantly more costly to implement if allowed to worsen. To qualify for proactive repair, the site must:

- Have conditions requiring repair beyond the scope of routine maintenance.
- Not have critical erosion problem or erosion damage longer than 50 feet. The 50 feet limitation of erosion length does not apply to Small Erosion Repair Program (see detail below)
- Not have levee slope instability conditions longer than 50 feet.
- Not require abatement of seepage conditions.
- Not require new property rights.

If a site qualifies, it is listed as a Proactive Repair Site. If not, it is listed as a Potential Repair Site that will go through further evaluation and ranking. The Small Erosion Repair Program is a collaborative effort to streamline permitting process for repair of small erosion sites in a proactive and environmentally responsible manner. The first phase of the Small Erosion Repair Program is implementing a pilot study to repair up to 15 sites per year for 5 years in DWR-maintained areas. If the resources agencies and other stakeholders find the process adequate, the Small Erosion Repair Program may be extended to all LMAs in subsequent FSRP's phases.

2.1.3 Screening Potentially Eligible FSRP Sites Against Administrative Criteria

The annual list of potentially eligible sites will be assessed against administrative criteria for eligibility, and sites falling into any of the categories below will be eliminated from further consideration:

- Sites that are inconsistent with the Site System-Wide Investment Approach identified in the 2012 Central Valley Flood Protection Plan.
- Sites that are components of a proposed or scheduled DWR or Central Valley Flood Protection Board project under other funding.
- Sites that are authorized or scheduled to be addressed under an existing federal program.

The FSRP will coordinate with the FloodSAFE Environmental Stewardship and Statewide Resources Office and other agencies during development of repair alternatives and/or site selection to assess consistency with the State Systemwide Investment Approach, and to minimize affects of FSRP actions on the viability of future environmental enhancement opportunities in identified eco-system function restoration projects or reaches.

2.1.4 Prioritization of Eligible Repairs

DWR's prioritization of potentially eligible repairs for soliciting LMA sponsorship will be based on:

- Maximizing flood risk reduction.
- Implementability and sustainability of repairs.
- Project funding.

Based on these criteria, a single potential FSRP repair project may consist of repairs at multiple sites of similar severity where collective repair will result in a significant incremental improvement in flood protection in a specific leveed area. Preference may be given to projects that would repair all eligible sites of similar severity in a leveed area over a project that would repair only a portion of similarly eligible sites.

Because of potential funding limitations, not all critical repair sites may be funded in each annual FSRP cycle. In addition, because implementation of an FSRP repair project is contingent upon execution of a Project Agreement with the LMA, availability of funding, obtaining all necessary permits and real estate, and other constraints, not all eligible sites identified during an annual FSRP cycle may be implemented. Any potentially eligible critical or proactive repair site that is ineligible, or any eligible repair site that does not proceed to a Project Agreement with an LMA, will be retained for consideration during the next FSRP cycle.

2.2 FSRP Project Development Process

2.2.1 DWR Solicitation of LMA Sponsorship

For each eligible repair site or set of repair sites specific to an LMA, DWR will submit an Eligibility Notice to the LMA. The Eligibility Notice will contain:

- A description of the eligible repair site(s), including classification (i.e., critical or proactive repairs).
- An evaluation of the alternatives considering environmental and real estate opportunities and constraints.
- Estimated cost of construction for the preferred alternative, including summaries of anticipated mitigation, environmental compliance, and regulatory permitting requirements and real estate impacts.
- A request for an Intent to Participate Letter from the LMA for entering into a Project Agreement with DWR.
- A list of documentation that must accompany the Intent to Participate Letter.

The requirements of the Intent to Participate Letter will be limited to confirmation that the LMA is authorized to contract with the state and intends to implement the project under DWR oversight and with cost-share.

An initial Eligibility Notice will specify when Intent to Participate Letters must be either mailed (postmarked), submitted in person, or submitted electronically to DWR. An LMA receiving an Eligibility Notice will be encouraged to submit any questions to DWR that might help clarify Intent to Participate Letter requirements within 2 weeks of when the Eligibility Notice was received. Incomplete Intent to Participate Letters submitted after the response deadline may be considered; however, DWR will reserve the right to delay consideration of such applications until the selection process for previously submitted Intent to Participate Letters is completed.

2.2.2 LMA Sponsorship

Implementation of an FSRP repair project is contingent on LMA sponsorship for an eligible FSRP repair project. LMA will confirm sponsorship by submitting to DWR an Intent to Participate Letter. At a minimum, an Intent to Participate Letter must include:

- A reference to the Eligibility Notice, including an overview of the FSRP repair project.
- A statement identifying the LMA's representatives.
- A statement concerning the applicant's legal authority to enter into a contract with the State of California, to implement a flood protection program, and to levy assessments and charges.
- A Resolution of Authority authorizing filing of the sponsorship and designating a representative to sign the Intent to Participate Letter. The Resolution of Authority must be a resolution of the LMA's governing board authorizing specific individuals to sign a Project Agreement on behalf of the LMA sponsor and authorizing specific individuals to apply for and accept state disbursements.

A statement indicating the LMA is willing and able to design and implement the project as agreed upon in the Project Agreement negotiations and will comply with CWC § 9140 for reporting requirements. On receipt of an Eligibility Notice, if the LMA declines to sponsor an eligible FSRP repair project, DWR will not perform repairs. Additionally, DWR may petition the Central Valley Flood Protection Board for formation of a maintenance area under CWC § 12878 et seq.

2.2.3 Project Agreement

When an LMA submits an Intent to Participate Letter, DWR will provide the LMA a list of the documents required to support the development of a Project Agreement between the LMA and DWR. The extent of required documentation will depend on the type and size of the project and the complexity of the repair effort. This process is described in detail in Appendix B.

Once an LMA has submitted an Intent to Participate Letter and provided the required Project Agreement documentation, DWR will prepare a Project Agreement identifying the roles and responsibilities for DWR and the LMA when implementing the FSRP repair project. Appendix B provides more detail about the conditions and requirements of Project Agreements under the FSRP. The Project Agreement will include a cost-share distribution based on the cost share provisions described in Section 4.5.

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All Project Agreements must be signed by the LMA sponsor. If a Project Agreement is not signed within 6 months of the date the LMA sponsor indicates its intent to sign, or if an LMA needs additional time to complete environmental review and permitting, it may submit a written request for additional time with appropriate justification. DWR reserves the right to deny a request for more time.

2.2.4 Project Implementation

As a component of the Project Agreement between the LMA and DWR, the LMA will prepare and update as necessary a work plan for the full project implementation according to the Project Agreement (See Appendix B). Projects must result in a complete and maintainable facility.

2.2.4.1 LMA Sponsor-Led Project Implementation

The LMA sponsor will design and construct the repair project, except for facilities identified in Section 2.2.4.2 below. DWR will monitor LMA activities and confirm compliance with all applicable permits, standards, laws, and other local, state, and federal requirements. The extent of oversight, depending on the type and complexity of the project, will be identified in the Project Agreement. FSRP repair projects implemented by LMA sponsors will be subject to the independent review requirements described in Appendix B.

For approved FSRP repair projects constructed by the LMA sponsor, an approval letter must first be issued to the LMA sponsor after execution of the Project Agreement, but before construction may begin. Before DWR will issue an approval letter, the LMA sponsor will be required to submit:

- Copies of any permits and mitigation monitoring plan(s).
- Design plans and specifications.
- Copies of real estate documents and other agreements, as appropriate, to demonstrate compliance with all applicable requirements of the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and all other applicable state and federal environmental requirements, including requirements of federal Clean Water Act, the federal Endangered Species Act, and the California Fish and Game Code.

Execution of a Project Agreement does not compel DWR to issue an approval letter. Issuance of an approval letter will constitute approval to begin construction.

2.2.4.2 DWR-Led Project Implementation

DWR will design and construct projects at facilities identified in CWC § 8361 and those maintained by DWR pursuant to CWC § 12878 et seq. DWR will be responsible for complying with all applicable permits, standards, laws, and other local, state, and federal requirements. FSRP repair projects implemented by DWR will be subject to the independent review requirements described in Appendix B.

3.0 PROJECT AND LMA ELIGIBILITY

3.1 Eligible LMA Sponsor

An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities. The sponsor must also be qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as an LMA sponsor provided the LMA with maintenance responsibility for the SPFC facility is a legal partner of the authority. The sponsor must also accept responsibility for continuation of O&M and related activities for the facility on completion of repairs.

LMA sponsors are subject to state and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, may result in a withdrawn Project Agreement and the project becoming ineligible for funding. Other legal action may also be taken. Before agreeing to become an LMA sponsor, LMAs are urged to seek legal counsel regarding potential conflict of interest concerns and requirements for disclosure. Applicable statutes include Government Code § 1090 and Public Contract Code § 10410 and § 10411.

As part of the conflict of interest requirements, DWR may require individuals working on behalf of an LMA sponsor to file a Statement of Economic Interests in the form of a Fair Political Practices Commission Form 700 if it is determined an individual is a consultant for Political Reform Act purposes.

An LMA sponsor must provide documentation of its authority and capability to fund its cost-share and implement its participation in an FSRP repair project as defined in the Project Agreement. Depending on the level of participation and the size and complexity of the repair, DWR may require a written Financial Plan, including a statement of financial capability, a plan to fund its cost-share to build the project, a plan to fund its obligations to perform O&M for the project and a plan to fund its obligation to repair, rehabilitate, reconstruct and replace the project. Detailed requirements for the Financial Plan, if required, are contained in Appendix B.

An LMA sponsor will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including:

- § 1720 et seq of the California Labor Code regarding public works.
- Limitations on use of volunteer labor as defined in California Labor Code § 1720.4.
- Labor compliance programs as defined in California Labor Code § 1771.5.
- Payment of prevailing wages for work done and funded pursuant to these Guidelines, including any payments to DWR of industrial relations as defined in California Labor Code § 1771.3.

3.2 Eligible Repair Projects

An eligible project must be a repair project consisting of work on a critical problem on existing facility of the SPFC. Eligible projects include repair of levees, weirs, flood relief structures, control structures, pumping plants, channels, bypasses, and other facilities of the SPFC. Actions that may be funded include:

- Repair of damaged levees.
- Repair of levee crest and access roads to ensure flood fight capability for the upcoming flood season.
- Erosion repair.
- Sediment control and channel capacity restoration.
- Repair of weirs, flood relief structures, and control structures.
- Modifications to pumping plants as necessary to restore facility to design capacity.
- Implementation of mitigation measures for the repair project, including capital costs related to mitigation through participation in a natural community conservation plan.
- Performance of work to meet habitat, open-space, or recreation objectives as part of a repair project.

Eligible FSRP repair projects may restore the level of protection up to the intended design level of protection and must fall outside the definition of routine maintenance. If a project improves a facility to a higher level of protection than originally intended, or represents routine maintenance, it is not eligible as discussed below.

3.3 Ineligible Repair Projects

The following project types are ineligible for consideration for repair under the FSRP:

- Repairs to sites that are not components of the SPFC, including appurtenant non-project levees (see below).
- Routine maintenance activities that should be performed under an LMA O&M program.
- Repair projects that increase a facility's level of protection to a higher level than its design level of performance or original design intent.

Appurtenant non-project levees are levees that, while not components of the SPFC, either have the potential to affect the operation of an SPFC feature should they fail, or that provide flood protection to areas that are also afforded protection by SPFC facilities. DWR has identified and evaluated such levees within its Levee Evaluation Program, and although potential repair sites identified on appurtenant levees may be evaluated under the FSRP as described in Section 3.0, these sites are not eligible FSRP repair projects. However, LMAs will be notified of any sites on appurtenant non-project levees that would otherwise meet eligibility, and LMAs may pursue a project under other state or alternate funding sources.

Routine maintenance responsibilities are defined in USACE's standard O&M manuals and unit-specific supplements, assurance agreements, and in state and federal law. For the Sacramento River Flood Control Project, O&M responsibilities are further defined by CWC § 8370 and § 12642. For the San Joaquin River Basin, O&M requirements and responsibilities are based on assurance agreements between the Board and each LMA, and CWC § 12642. For the purposes of the FSRP, routine maintenance activities may include:

- Removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow.
- Controlling weeds, grasses, emergent vegetation, and woody vegetation.
- Controlling rodents, grouting rodent holes, dragging and track walking levee slopes.
- Repairing gates, barricades and small structures.
- Completing minor erosion (rated acceptable or minimally acceptable based on DWR inspections) and stability repairs.
- Other work necessary to maintain the function and integrity of the flood control projects.

Maintenance responsibilities are also described in USACE Flood Control Regulations, 33 CFR § 208.10, USACE O&M manuals, and local assurance agreements.

3.4 Eligible Costs

Eligible project costs are the reasonable and necessary actual costs associated with an eligible project and are described in the Project Agreement, including:

- Costs associated with design.
- Environmental documents.
- Property rights acquisition or purchase.
- Construction.
- Independent reviews.
- Work to meet the habitat, open-space, or recreation objectives consistent with the Guidelines for Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects (DWR, 2010).

Only costs for work performed as described in the Project Agreement, and for any DWR-approved change, are eligible project costs. For all eligible project costs described below, billing and payment will be based on the cost of work accomplished. For construction, billing and payment will be based on the cost of work accomplished on the contract items and tasks estimated in the Project Agreement. Unit prices will be used only for establishing the estimated amount of state funding.

Once an LMA sponsor is established, no funds will be disbursed until a Project Agreement has been executed. Under the conditions described in Appendix C, the cost of work performed prior to execution of the Project Agreement may be eligible for credit against the local share of project costs.

Eligible project costs include only reasonable and necessary actual costs directly related repair project elements such as:

- Obtaining necessary environmental permits and associated environmental mitigation directly related to the proposed project, including costs associated with preparing documents required by CEQA and, if applicable, NEPA.
- Legal fees for conducting work eligible for reimbursement.
- A proportionate share of reasonable overhead costs related to the repair project.
- Performing design activities in accordance with the appropriate environmental documents.
- Collection of engineering data for use in the design or construction.
- Advance preparation for right of way acquisition, as described in Section 4.8.
- Eligible real estate capital outlay costs (see Section 4.8).
- Obtaining other necessary federal or state governmental approvals.
- Necessary relocation expenses for property owners and tenants affected by the project.
- Utility relocations and damage to real property.
- Constructing the project in accordance with the design, including project management and other supplementary costs approved in writing by DWR prior to construction.
- Progress reports and the final project report.
- DWR monitoring of project construction.
- Conducting an independent review as described in Appendix B.
- Other costs identified as determined by DWR to be eligible and included in the Project Agreement.

With respect to costs associated with environmental mitigation and monitoring required by CEQA, NEPA, or other applicable permits, only those costs incurred in the first 3 years that the mitigation and monitoring program is in effect, or during an alternate period as negotiated between the LMA and DWR and documented in the Work Plan, may be considered eligible project costs. This mitigation and monitoring includes costs incurred to establish plants and monitor environmental health. After the mitigation and monitoring program has been in effect for 3 years or for the duration of an alternate period, any continuing costs associated with environmental mitigation and monitoring will be considered routine maintenance, and will not be considered eligible FSRP costs.

To determine the eligibility of certain types of costs, DWR intends to use the same guidance document used by USACE, the Office of Management and Budget Circular A-87 (see 2 CFR Part 225, Exhibit E [indirect costs], or 2 CFR Part 225, Exhibit B, Item 23 [interest costs]). A copy the Office of Management and Budget Circular A-87 can be found at: http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf.

4.0 GENERAL CONDITIONS

This section covers the general conditions that apply to implementation of all eligible FSRP repair projects. These conditions will be incorporated into the Project Agreement as described in Appendix B.

4.1 Basis for Initial Funding and Scheduling

Initial funding will be based on the pre-design estimate of costs and any LMA contributions that are to be credited as defined in Appendix C of these Guidelines. Funding may be adjusted immediately prior to the execution of a Project Agreement with the LMA, immediately after the project construction contract is awarded, and when all costs are known after completion of construction. The adjustments will be based on actual eligible expenditures and updated estimates of completion costs.

The initial schedule for construction will be derived from the critical path method diagram in the design, with the start date updated when determined. The schedule may be adjusted to reflect changes approved by DWR.

4.2 Basis for Disbursement of Funds

Disbursement of funds under an executed Project Agreement will be based on conditions identified in Appendix C of these Guidelines.

4.3 Regulatory Compliance

Projects will comply with all applicable permits, standards, laws, and other local, state, and federal requirements. These may include the regulatory requirements of the Federal Energy Regulatory Commission, USACE, the Central Valley Flood Protection Board, the State Water Resources Control Board, and other agencies. Projects will also comply with:

- CEQA.
- NEPA, if applicable.
- State and federal Endangered Species Acts.
- Federal Clean Water Act.
- Any other applicable laws.

For projects constructed by an LMA, the LMA sponsor must identify and obtain any permits required for the work. For projects constructed by DWR, DWR will identify and obtain required permits.

4.4 Environmental Compliance

FSRP repair projects are required to comply with CEQA. DWR will not fund construction work before the CEQA/NEPA process is completed. For LMA-led FSRP repair projects, the LMA will be responsible for the preparation, circulation, and consideration of the environmental document prior to making any irretrievable commitments of resources for

project activities that are subject to CEQA and NEPA when required. The LMA, in consultation with DWR, will be responsible for determining the appropriate environmental document to comply with CEQA requirements (i.e., Statutory Exemption, Categorical Exemption, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report).

4.5 Cost-Share

Disbursement of FSRP funds to an LMA sponsor will take place under a Project Agreement between DWR and the LMA sponsor. Projects will be cost-shared with LMA sponsors. The total project cost of repair projects sponsored by the LMA will be shared with the LMA according to percentages obtained using the methods described below. For FSRP repair projects on facilities maintained by DWR through a maintenance area, costs will be shared in the same manner, but the local share will be paid using maintenance area funds. For FSRP repair projects on facilities maintained by DWR under CWC § 8361, DWR will pay all applicable costs through the FSRP. DWR will apply a maximum state funding of \$5,000,000 per project. DWR's director may authorize variances to this provision to fund projects under exceptional circumstances. The total project cost does not include DWR's costs incurred prior to notifying the LMA of project eligibility, including the compilation, evaluation, prioritization and selection of potential repair sites or the development and negotiation of the Project Agreement.

Projects may also be partnered with federal agencies or state agencies other than DWR, if such sponsorship is available and applicable. Project partnering with federal or other state agencies will be accomplished under agreements between the LMA or DWR and those agencies. These additional funds will be applied against the total project costs, with the remaining project costs to be shared between the LMA and DWR in accordance with cost-share provisions described in this section.

4.5.1 Base Cost-Share Provisions

The base DWR cost-share of the FSRP will be based on DWR's Guidelines for Establishing Local Agency Cost-sharing Formulas for Flood Programs and Projects, which can be found on the DWR FloodSAFE website at:

http://www.water.ca.gov/floodsafe/docs/Cost_Sharing_Formula_12-29-10_Final.pdf. Under these cost share guidelines, the State may cost-share at a higher percentage than the minimum percentage of 50 percent. Credit is given for open space, habitat, and recreation enhancements, and for protection of state facilities up to a cap of 20 percent. Additional credit toward a higher state cost-share is available for flood protection in economically disadvantaged areas.

The DWR Cost-Sharing Formula also allows credit to be given for program-specific enhancements; however, the maximum state cost-share cannot exceed 90 percent. Additional cost share enhancements specific to the FSRP are described in the following section.

4.5.2 Enhanced Cost-Share Specific to FSRP

The FSRP will provide for increasing the base state cost-share for LMAs who have demonstrated effective flood-risk reporting, emergency response, and/or operation and maintenance effectiveness, or are actively participating in the regional flood management projects. The sponsoring LMA may be eligible to reduce its cost-share based on past compliance with reporting requirements per CWC § 9140 to emergency response preparedness, and O&M. The sponsoring LMA may be eligible to reduce its cost-share based on participation with DWR as a sponsor or participant in the Regional Flood Management Planning Initiative, as an Integrated Regional Water Management region, or in another multi-benefit project. The sponsoring LMAs may also be eligible to reduce its cost-share if it is collaborating on implementing projects with other LMAs in its region or leveed area for which collective repair will result in an incremental flood risk reduction. Table 4-1 lists performance criteria and associated scores. Scoring will be at the discretion of DWR and will be negotiated during development of the Project Agreement. An LMA's maintenance quality index score correlates to the percent increase in state cost share, subject to limitations.

The maximum credit for FSRP specific enhancements is 35 percent. When combined with the credits (excluding credit for disadvantaged areas) allowed by the base cost share provisions defined in Section 4.5.2, the state's total cost-share cannot exceed 85 percent; however, if eligible for credit as an economically disadvantaged area, the maximum state cost share can increase to 90 percent. Several examples of cost-share calculations using these Guidelines are in Appendix D.

4.6 Design

Design calculations, plans, and specifications for FSRP repair projects will be prepared by the LMA or DWR as defined by the terms of the Project Agreement. Designs will be converted into formal contract documents providing the information needed to begin project construction, including plans showing project features, specifications complementing the plans, a detailed cost estimate showing the eligible project costs by line item, a design analysis or report showing engineering calculations, a task breakdown for project construction, and a schedule for project construction produced by use of a critical path method diagram. All documents will be prepared with enough specificity and completeness so that a qualified and experienced general contractor will be able to understand the scope and bid on the project. Design calculations, plans, specifications, and estimates will be certified by an engineer who is registered pursuant to California law with a minimum of 5 years of relevant geotechnical experience unless otherwise approved by DWR. DWR reserves the right to review and approve the qualifications of consultants and contractors employed on an FSRP Project Agreement. Projects must result in a complete and maintainable facility.

Table 4-1. FSRP Cost-Share Incentive Objectives Performance Score.

Number	Criteria Description	Rating Score ¹	Weight Factor	Weighted Score
LMA Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).		0.5	
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)		1	
3	A summary of maintenance performed by the LMA during the previous fiscal year.		1	
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.		0.5	
LMA Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.		2	
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.		2	
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: the standardized emergency management system, the national incident management system and incident command system (SEMS/NIMS/ICS) introduction, flood-fight methods and environmental awareness.		1	
LMA Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.		1.5	
2	Rodent abatement program, entailing an effective plan, budget, practice, and inspections.		1	
3	Vegetation management in compliance with current DWR standards and policies.		1	
4	Encroachment management: inspections, evaluations, and enforcement.		1	
5	Routine maintenance of flood control facilities.		2.5	
6	Participation in a Corridor Management Strategy (see 2012 Central Valley Flood Protection Plan pages 4 through 8 and Attachment 2, pages 5 through 23) or similar planning effort.		1.5	
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, and annual budgets.		1.5	
LMA Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, Integrated Regional Water Management region, or multi-benefit project.		1.0	
2	Collaboration with LMA's in same region or leveed area.		1.5	
Total weighted score:				
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA maintenance quality index score (maximum = 35):				

¹Rating Scores: not acceptable = 0; minimally-acceptable = 1; acceptable = 2

4.6.1 Design Criteria

The design criteria are the most significant factors affecting the selection of repair alternatives because they impact repair costs. Design criteria will adhere to these principles:

- Repairs will primarily focus on addressing a critical problem without exacerbating other existing problems at the same site. For example, if an erosion problem is critical and is proposed for repair, the proposed repair shall be able to withstand the erosive forces anticipated up to a design level of flood protection. The erosion repair would not address existing through seepage that is a non-critical problem at the same site. Design reviews will ensure that the proposed repair does not exacerbate other existing problems.
- Repairs shall meet minimum engineering practices for safety.
- Repairs should be designed to maximize avoidance of environmental impacts and to limit mitigation to impacts that cannot be avoided.
- At DWR's discretion, the repairs may be designed to a lower level of flood protection. This pragmatic approach will allow an incremental reduction of flood risk.

To ensure consistency in FSRP designs and to expedite repair implementation, DWR will prepare rehabilitation criteria that will further define design criteria for erosion, slope stability, and seepage problems under the FSRP using these principles. In addition, the Central Valley Flood Protection Board may create an advisory committee that will work with DWR, LMAs, interested stakeholders, and USACE to develop rural levee repair and improvement criteria that may be applied to FSRP repairs. A draft of these rural levee repair and improvement criteria is expected to be available by the end of 2013.

4.7 Ecosystem Improvement Habitat Enhancement, and Recreation Components

DWR or the LMA sponsor may originate elements contributing to the habitat, open space, and recreation objectives consistent with the base cost share provisions described in Section 4.5.1. These costs are part of the total project cost provided they are originated by the LMA, and are not funded by federal or other state agencies. Habitat, open space, and recreation elements that do not meet these conditions are not included in the total project costs.

4.8 Acquisition of Property Rights

FSRP repair projects may be constructed on land currently secured for flood project purposes that is managed by the Sacramento-San Joaquin Drainage District or on land for which the LMA has secured rights to use for construction and O&M of the project improvements. Costs associated with acquisition of property rights are considered eligible project costs as defined in previous sections. DWR may perform work in preparation for acquisition of right-of-way and other real property rights for the project being designed under the following conditions:

- DWR may advance state funds to pay LMA staff salaries, staff expenses, and equipment and materials costs for performing work leading to the acquisition of property rights.

- DWR may advance state funds to pay for real property rights to be acquired that are necessary and appropriate for the project.
- DWR may account for all reimbursable costs of preparing for property rights acquisition as an item in the design task breakdown.
- DWR will provide a list of properties for which state funds were expended to prepare for acquisition. The list will identify which actions, such as parcel descriptions and title searches, were performed for each parcel.
- The LMA sponsor will pay the local share of the costs of property rights acquisition and preparation for such acquisition.

5.0 CHANGES TO OVERALL WORK PLAN AFTER FUNDING AGREEMENT IS SIGNED

After the Project Agreement is executed, DWR 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. DWR 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 DWR, DWR 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 DWR's discretion, changes in the scope of the work plan require an increase in funding, DWR may authorize an increase in the project budget of up to 10 percent without amending the Project Agreement.

If the LMA sponsor and DWR agree to a material change with respect to the work plan that decreases the total project cost, there shall be a proportionate reduction in the limit on state funds.

If a change to the base cost share provisions described in Section 4.5.1 causes the overall state share of the total project cost to increase or decrease, then the Project Agreement must be amended, which will be subject to approval by the Department of General Services.

If DWR approves a material change pursuant to the provisions of this section, the LMA sponsor shall include information regarding the material change in the reports required by the Project Agreement. DWR and the LMA sponsor shall also formally amend the Project Agreement to reflect any material change, which will be subject to approval by the Department of General Services.

5.1 LMA Sponsor's Construction Default

If for any reason an LMA sponsor is unable to completely construct an FSRP repair project, DWR, at its sole discretion, may do any or all of the following:

- Cancel the Project Agreement.
- Complete the project using its own resources.
- Contract with the current or any other contractor to complete the project.
- Require that the LMA sponsor 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.

6.0 GUIDELINES FOR PUBLIC REVIEW AND AMENDMENTS

6.1 Public Review of Guidelines

A draft of these Guidelines was released for public review and comment on February 20, 2013 and was available for public comment for 45 days. DWR conducted two public workshops during the public comment period to provide an additional opportunity for public review and comment the draft Guidelines. The final Guidelines have been adopted by DWR and are available on the FloodSAFE website at <http://www.water.ca.gov/floodsafe/>.

6.2 Amendments to Guidelines

Any or all of the eligibility criteria, requirements, or procedures specified in these Guidelines may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion by amending these Guidelines pursuant to the process set forth in this section. Amendments to the Guidelines will be publicly posted and made available for public comment for a minimum of 2 weeks.

DWR does not intend to apply amendments to these Guidelines for projects where Project Agreements have been executed; however, in situations where an executed Project Agreement must be amended for other reasons, DWR will consider making changes to the agreement that are consistent with the version of the Guidelines in effect at the time that the agreement is amended. An executed Project Agreement can only be amended if both DWR and the LMA sponsor agree to do so.

If the eligibility criteria are changed for any reason following issuance of any Eligibility Notices but before Project Agreements are executed, DWR will notify the LMA sponsor of the changes. If the LMA sponsor has supplied information, DWR will request additional information as needed to determine whether the proposed projects meet all applicable revised or new criteria. DWR, following any response of the LMA, shall have the option to either cancel the Eligibility Notice for the project or offer a revised Eligibility Notice reflecting the changed conditions.

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APPENDIX A

Definitions

Unless the context otherwise requires, wherever the following acronyms and terms, or pronouns in place of them, are used in these Guidelines and in Project Agreement documents, the intent and meaning shall be interpreted according to the definitions below.

Benefited Area

The area that receives improved flood protection from the proposed project. The benefited area should be the same area for which benefits are estimated for economic analysis. Generally, this will include a hydrographic basin.

California Median Annual Household Income

The median annual household income in dollars for California reported in the most recent census or updated census-based data.

Critical Damage

Damage to a flood protection facility such that the facility is near failure, as evidenced by the existence of any of the following damage conditions, and would reasonably be expected to fail during the course of a single flood season or single high water event:

- Erosion has encroached into the levee or its foundation (i.e., the projected waterside slope of the levee).
- Internal erosion caused by seepage through or under the levee during a past flood event has occurred (i.e., there is evidence of boils or piping that moved fine soils from the levee or its foundation).
- The levee is actively unstable, as evidenced by motion of the levee.
- Erosion has encroached into the channel bank that may cause bank failure leading to loss of design flow conveyance capacity.
- A channel cross section had decreased such that the channel can no longer pass design flow with required freeboard
- Any other flood protection facility is actively unstable and may lose its flood protection function.

Critical Path Method

A method of calculating a diagrammatic schedule that is derived by calculating the total duration of a project based on individual task durations and their interdependencies. A critical path method diagram is usually depicted in a bar graph format showing the task durations and their interdependencies.

Damage

A condition of a levee or other flood protection facility directly caused by the action of water or fatigue (see Critical Damage and Serious Damage).

Design

All activities following a pre-design phase leading to physical definition of the project in sufficient detail to enable project construction. A design will be certified by a Professional Civil Engineer registered in the State of California.

Disadvantaged Area

A benefited area having a median annual household income that is less than the disadvantaged household income.

Disadvantaged Household Income

A household with 80 percent of the California median annual household income.

Eligibility Notice

A letter from the Department of Water Resources to a local maintaining agency about a potential Flood System Repair Project, stating that the subject project may be eligible for cost-sharing and requesting that the local maintaining agency provide an Intent to Participate Letter to become the local maintaining agency sponsor of the project, enter into a Project Agreement, participate in the cost, and perform the construction.

Eligible Project Costs

The reasonable and necessary actual costs associated with a Flood System Repair Project repair project as further described in these Guidelines. Such costs include only those associated with elements that are necessarily a part of the flood protection effort or that are included to meet the habitat, open space, and recreation objectives described in the Department of Water Resources' Cost-Share Formula.

Flood Protection Facility

Any levee, embankment, structure, channel, or other facility whose function is to protect property or people from the effects of floods which is part of the State Plan of Flood Control.

Full-Share Costs

Eligible project costs that will be cost-shared at 50 percent plus any increases approved by the Department of Water Resources under these Guidelines (see Section 3.4).

Intent to Participate Letter

A letter from a local maintaining agency to the Department of Water Resources about a potential Flood System Repair Project, stating that the local maintaining agency intends to become the sponsor of the repair project, enter into a Project Agreement, participate in the cost, and in the case of the Flood System Repair Project, perform the construction.

Levee

An embankment or similar structure intentionally constructed for the purpose of preventing overflow of a watercourse, which is a part of the State Plan of Flood Control.

Leveed Area

One or more levee segments and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices to provide reasonable assurance of excluding flood water from an associated separable floodplain. A leveed area is the largest geographic area for which priorities are assigned for potential repairs as part of the Flood System Repair Project and are consistent with Central Valley Flood Protection Plan impact areas.

Level of Protection

Relates to the probability of flooding in any 1 year (e.g., a 1 in 50 annual chance of flooding is a 50-year level of protection).

Limited-Share Costs

Eligible project costs for which the Department of Water Resources' cost-share is limited to 50 percent by law or by Department of Water Resources policy.

Local Agency

A public agency in the state, duly organized, existing and acting pursuant to the laws thereof, in good standing, including any county, city, district, or joint powers authority. For the purposes of these Guidelines, a local agency must have authority to implement flood management projects.

Local Maintaining Agency

A local agency responsible for flood control including maintenance of State Plan of Flood Control facilities. With respect to a particular project, the local maintaining agency's maintenance responsibility must include the site of the proposed project.

Maintain

To keep a flood protection facility in the condition in which it was constructed, preserving its features against failure or decline in functionality, including maintenance, repair, rehabilitation, reconstruction, and replacement when necessary.

Maintenance Area

The geographic area established pursuant to California Water Code § 12878 et seq. and assessed to support specific flood-protection facilities maintained by the Department of Water Resources in lieu of maintenance by a local maintaining agency.

Maintenance Quality Index

A measure of the quality of maintenance performed by a local maintaining agency, by the Department of Water Resources in a maintenance area, or by a flood maintenance yard of the Department of Water Resources on all State Plan of Flood Control facilities for which that entity is responsible under California Water Division 5, Flood Control (Chapter 3, Maintenance And Operation At Sacramento River Flood Control Project), and Public Resources Code § 5096.805.

Median Annual Household Income

The median annual household income for the benefited area reported in the most recent census or updated census-based data provided by a vendor selected by the Department of Water Resources.

Milestone

A time when a significant and specific portion of a project is completed and identified in the Project Agreement as a time for disbursement of state funds.

Open Space

Any parcel or area of land or water that is essentially unimproved and restricted to an open space use consistent with the uses set forth in California Government Code § 65560. Open space is designated as any of the following:

- Open space for the preservation of natural resources.
- Open space used for the managed production of resources, including forest lands, rangeland, and agricultural lands.
- Open space for outdoor recreation.
- Open space for public health and safety, including, flood plains, watersheds, and areas required for the protection of water quality or groundwater recharge.

Pre-Project Costs

Costs related to a Flood System Repair Project that may qualify as eligible project costs in all respects except that they were incurred before the execution of a Project Agreement.

Proactive Repairs

Small deficiencies that are worsening rapidly, have the potential to become critical, and that can be designed and constructed by the local maintaining agency.

Project

A project is all engineering, design, acquisition of permits and right-of-way certifications, construction and related activities undertaken to implement a discrete action undertaken under these Guidelines.

Project Agreement

A contract entered into by a local maintaining agency sponsor and the Department of Water Resources describing the conditions under which a Flood System Repair Project will be performed, and defining responsibility for providing funds and services for the project.

Repair

An action that restores, rehabilitates, reconstructs, or replaces a levee, weir, bypass, or other facility of the State Plan of Flood Control to regain the functionality of the facility to the level of the original design.

Routine Maintenance

Normal operations and maintenance responsibilities as defined by California Water Code § 8370 and § 12642, operations and maintenance manuals and supplements, and U.S. Army Corps of Engineers flood regulations. For the San Joaquin River basin, operations and maintenance requirements are based on assurance agreements between the Central Valley Flood Protection Board and each local maintaining agency. Routine maintenance activities may include:

- Removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow.
- Controlling weeds, grasses, emergent vegetation, and woody vegetation.
- Controlling rodents, grouting rodent holes.
- Dragging and track walking levee slopes.
- Repairing gates, barricades and small structures.
- Completing minor erosion and stability repairs.
- Other work necessary to maintain the function and integrity of the flood control projects.

Seepage

Water passing through or under a levee under hydrostatic pressure without any definable channel or duct, and evidenced by wetness of the levee or flowing or standing water on the land side.

Serious Damage

Damage to a flood-protection facility such that the facility is approaching a state of failure but is not likely to fail during the next flood season or single high water event, as evidenced by the existence of any of the following damage conditions:

- Erosion is predicted to encroach into the levee or its foundation within the next flood season or single high-water event.
- Internal erosion caused by seepage through or under the levee does not appear to have occurred yet, but is predicted through engineering analysis to occur at the project design stage (e.g., the factor of safety against piping is less than unity).

- The levee is not actively unstable, but an engineering analysis demonstrates an unacceptable factor of safety for stability (i.e., the design stage steady state seepage slope stability safety factor of less than 1.2 for a landside levee slope).
- Active erosion is predicted to encroach into the channel bank, which may cause bank failure leading to loss of design flow conveyance capacity.
- Any other facility is not actively unstable, but an engineering analysis demonstrates an unacceptable factor of safety.

Sponsor

A local maintaining agency that has agreed in writing to participate in a Flood System Repair Project as described in these Guidelines.

State

Where the context implies a political subdivision, the term is defined as the State of California, or where the context supports, the term is defined as the State of California acting by and through the Department of Water Resources.

State Plan of Flood Control

As defined in California Water Code § 5096.805(j):

“... the state and federal flood control works, lands, programs, plans, conditions and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the CWC, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the CWC for which the board or the department has provided the assurances of non-federal cooperation to the United States, which shall be updated and compiled into a single document entitled ‘The State Plan of Flood Control.’

Total Project Cost

The portion of the cost of the project that is to be shared between the Department of Water Resources and the local maintaining agency sponsor, or the cost that will be paid entirely by the Department of Water Resources if there is no local maintaining agency sponsor. The costs contributed by other state or federal agencies are not included in the total project cost.

1.0 INTRODUCTION

This appendix describes the required provisions for Project Agreements between the Department of Water Resources (DWR) and local maintaining agencies (LMAs) for projects administered under the Flood System Repair Project (FSRP) as defined in these Guidelines.

Before DWR will make any disbursement for an LMA-sponsored project, DWR and the LMA sponsor must execute a Project Agreement. The Project Agreement will require review and approval by the Department of General Services.

The Project Agreement is a contract between the LMA sponsor and DWR, and details the terms by which the LMA sponsor and DWR will work together to fund, manage and complete the FSRP repair project. Those terms include, among other things:

- Discussion about the repair project schedule and cost.
- A cost-sharing agreement.
- Limits of state funds.
- LMA sponsor responsibility for completing and maintaining the project.
- Method for the LMA sponsor to receive project funds from DWR.
- Method for DWR to receive project funds from the LMA sponsor.
- Discussion of reporting requirements.
- Independent review requirements.

If an LMA fails to completely construct a project under the terms of the Project Agreement, DWR, at its sole discretion, may do any or all of the following:

- Cancel the Project Agreement.
- Complete the project using its own resources.
- Contract with the current or any other contractor to complete the project.
- Require that the LMA sponsor 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.

2.0 PROVISIONS FOR ALL PROJECT AGREEMENTS

Project Agreements will include provisions suitable for the project conditions. At a minimum, all Project Agreements must include:

- A description of the project.
- A cost-sharing formula in which the LMA sponsor pays a specified percentage of the eligible project costs.
- A requirement that the LMA sponsor indemnify and hold the state, its agencies, officers, and employees free and harmless from any and all liability arising out of project activities.
- A requirement that the LMA sponsor assures the completed project and any associated environmental mitigation measures will be operated and maintained in accordance with the then-applicable Operations and Maintenance (O&M) Manual, revised or amended by the LMA and approved by DWR as necessary to address the completed project.
- A provision that the LMA sponsor will perform maintenance with its own staff, or will employ another agency or organization satisfactory to DWR.
- A provision that the LMA sponsor will control encroachments on project facilities and properties, whether unauthorized or permitted, and will not allow any new encroachments without Central Valley Flood Protection Board approval.
- A requirement that, if the LMA fails or refuses to perform the obligations set forth in the Project Agreement in the opinion of the State, DWR may, upon 30 days written notice, enter the property, perform the required work, and bill the LMA sponsor, and the LMA sponsor will reimburse DWR for any work so performed.
- A provision stating that, notwithstanding the ability of DWR to enter the property to perform required obligations set forth in the Project Agreement, DWR can seek a court order requiring the LMA sponsor to perform its contractual obligations to do such work and/or pay DWR's costs for doing such work.
- Any other engineering, technical, financial, economic, environmental, or legal requirements deemed necessary by DWR, including additional requirements with regard to indemnification.
- Citations of the LMA sponsor's statutory enabling laws, authority to construct the project, and authority to contract with DWR, including a brief description of procedural steps required by the LMA sponsor's enabling laws to contract with DWR.
- Evidence of compliance with Section 3.0 of Appendix C of these Guidelines regarding acknowledgement of flood risk, application for credit or reimbursement from the U.S. Army Corps of Engineers (USACE), and execution of an agreement providing for the LMA sponsor's O&M of the project.
- An attachment containing a resolution of the LMA sponsor's governing body approving the Project Agreement and designating a representative to execute the Project Agreement and to sign requests for disbursement of state funds.
- If required by DWR, an appendix containing the LMA sponsor's Financial Plan, as described in Section 2.1.

- If required by DWR, an appendix containing the LMA sponsor's Maintenance Plan, as described in Section 2.2.

2.1 Financial Plan

DWR may require that an LMA sponsor provide a Financial Plan as part of the Project Agreement; however, a Financial Plan will not be required if the cash component of the LMA's cost-share is less than 25 percent of the LMA's annual O&M budget. When required, the Financial Plan must demonstrate both how the LMA sponsor will finance its share of the project and how it will fund its obligations to operate, maintain, repair, replace, and rehabilitate the project. The Financial Plan must be reviewed and certified by a Certified Public Accountant or, preferably, a Certified Government Financial Manager.

DWR will provide a preliminary cost estimate, a preliminary project schedule, and the percentage value of the LMA sponsor's cost-share to serve as a framework for the LMA sponsor's Financial Plan. The estimate and schedule will be subdivided into tasks and correlated to give the timing and cost of each task.

The Financial Plan will become an appendix of the Project Agreement. It must be submitted before the Project Agreement is executed.

With respect to the LMA sponsor's cost-share of the project, the Financial Plan must include:

- A statement of financial capability with:
 - Evidence that the LMA sponsor has the financial resources to adequately fund its portion of the project plus a contingency of at least 10 percent.
 - Evidence of the LMA sponsor's authority to use the identified source or sources of funds.
 - Evidence of the LMA sponsor's ability to obtain additional funds if necessary.
 - If the LMA sponsor is relying on its full faith and credit to obtain remaining funds (such as the use of general obligation bonds), a credit analysis, performed within the 3-year period before the date of the Project Agreement, demonstrating that the LMA sponsor is credit worthy.
 - If the LMA sponsor is relying on non-guaranteed debt (such as a particular revenue source), an analysis that demonstrates that the projected revenues or proceeds are certain and are sufficient to cover the LMA sponsor's stream of costs through time.
 - If the LMA sponsor is relying on third-party contributions, comparable data for the third party and evidence of its legal commitment to the LMA sponsor.
 - A list of all cash reserves and any planned uses of these reserves.
 - If the applicant needs to obtain loans, information about the loans, including a description of the repayment method.
 - Audited financial statements for the LMA sponsor's last 3 years of operations.
- A statement of revenues describing all funding sources for the project and characterizing each as committed or anticipated, with a description of the likelihood of realizing the

anticipated amounts. If the funds of certain sources are limited to certain parts of the project, those limits must be described.

- A financial schedule showing the source and amount of each payment of the LMA sponsor's share anticipated under DWR's estimate and schedule.
- Identification of risks to revenue sufficiency and potential mitigation actions should the risk be realized.

With respect to the LMA sponsor's obligation to operate, maintain, repair, rehabilitate, reconstruct, and replace the project under the terms of its agreement with the Central Valley Flood Protection Board, the Financial Plan must include:

- Evidence that the LMA sponsor is financially able to properly operate and maintain the completed project.
- A summary of the O&M cost for the LMA sponsor's current flood management facilities.
- Identification of the source of revenue to fund O&M costs.
- An estimate of O&M costs after completion of the project.
- An estimate of the impact of these costs on the LMA sponsor's current O&M budget.
- Identification of a source of funds to address any additional O&M costs that may result from the project.
- An estimate of the costs for repair, rehabilitation, reconstruction, and replacement of the project.
- Evidence that the LMA sponsor has a sound financial strategy to fund required repair, rehabilitation, reconstruction, and replacement of the repair project.

2.2 Maintenance Plan

If DWR determines that the FSRP repair project necessitates revisions to O&M requirements, the LMA must provide a Maintenance Plan satisfactory to DWR. The Maintenance Plan will become an appendix of the Project Agreement. It must be submitted before the Project Agreement is executed. The Maintenance Plan must include:

- A description of the facilities and properties to be maintained.
- The name of the maintaining agency.
- A provision requiring the LMA sponsor to maintain the completed project in perpetuity or until DWR agrees in writing that the project is no longer needed and maintenance is no longer required.
- A description of periodic maintenance activities that will be performed, and the frequency and timing of performance.
- Disclosure of the source of funds for the maintenance.
- A certification, under penalty of perjury, that the LMA sponsor can pay for maintenance of the project facilities from funds available to the LMA sponsor.

- A provision requiring the LMA sponsor to provide annual pictorial reports to DWR each year between July 1 and July 15 describing the maintenance activities performed during the year and any maintenance problems that exist.
- LMA sponsor's assurance that the maintenance measures or repairs DWR deems necessary will be promptly performed.

APPENDIX B

Provisions for Project Agreements

3.0 ADDITIONAL PROVISIONS FOR FSRP REPAIR PROJECTS PERFORMED BY THE LMA SPONSOR

Project Agreements for projects performed by the LMA sponsor will include additional provisions suitable for the project conditions. DWR will provide the LMA a list of required documents that must be submitted to DWR as required components of the Project Agreement. The requirements of the Project Agreement will vary depending on the type, size, and complexity of the eligible repair project. The required Project Agreement documentation for projects implemented by an LMA are described below and in the following sections.

- The LMA sponsor shall provide evidence that it has acceptable labor compliance procedures in place.
- Before beginning project construction work, the LMA sponsor must receive an approval letter, as described in Section 2.2.4.1 of these Guidelines, approving the Project Agreement and allowing construction to begin.
- The LMA sponsor must make progress reports to DWR, as described in Section 3.2, as a prerequisite to each disbursement, and DWR will monitor progress and may withhold up to 100 percent of the currently requested payment if progress is not satisfactory.
- Payments to the LMA sponsor will be made upon completion of previously identified milestones or on a frequency basis that would be no more often than monthly but at least quarterly in arrears upon receipt of invoices and progress reports.
- A work plan, including a project schedule and costs, as described in Section 3.1.
- A requirement that the LMA sponsor submit progress reports as described in Section 3.2 and a written final project report as described in Section 3.3.
- A provision that individual contract items or task costs may not overrun or changed without written approval from DWR.
- A provision that, if there is a cost overrun with respect to an individual contract item or task of no more than 20 percent of the original estimate, DWR may authorize the use of any available contingency fund or reallocation of unexpended funds for other individual contract items or tasks.
- A provision that, if there is a cost overrun or decrease in allocated funds that exceeds 20 percent of the amount originally estimated for an individual contract item or task, the LMA sponsor and DWR may agree to amend the Project Agreement.
- A provision that DWR may inspect the repair project at any reasonable time to ensure it is being carried out in accordance with the work plan.
- A provision that DWR may inspect the repair project at any reasonable time after completion to ensure that it is being properly maintained.
- Documentation of compliance with all applicable environmental laws (California Environmental Quality Act [CEQA], and National Environmental Policy Act [NEPA] if federal funding or approvals are included or needed in the project) as required in Section 4.3 of these Guidelines.

3.1 Work Plan for LMA Sponsor-Implemented Projects

An LMA sponsor must develop a work plan that is satisfactory to DWR that includes:

- A work breakdown showing and describing all contract items and tasks expected to occur during the project. The work breakdown shall include:
 - A clear scope of work for design, environmental permits, and right-of-way work.
 - Construction work listed by contract item, and described as the project would be advertised to a contractor.
 - Contract administration may be listed as a separate task.
- A work schedule in a format acceptable to DWR.
- An estimate of:
 - Cost to perform the design.
 - Cost to acquire environmental permits and right-of-way clearances.
 - Cost of each construction contract item and task.
 - Amount of each construction contract item and task that will be funded using state funds.
- The estimate must have all costs assigned to contract items or tasks.
- Contract administration may be listed as a separate task, or may be included in each item related to such costs.
- No more than 10 percent of the total cost of all described contract items and tasks may be shown in the estimate as a contingency fund.
- A definition of project milestones if payment is to be made upon milestone completion.

To help the LMA sponsor develop a work plan, DWR may visit the project site to assess its conditions and needs. DWR may confer with the LMA sponsor and other local officials with an interest in the project to convey recommendations and exchange information.

The LMA sponsor may revise the work plan from time to time during the term of the Project Agreement, but only with the approval of DWR. Revision of the work plan may result in a revision of the funding amount, the cost-shares, or both, and may require the approval of the Department of General Services. Additional conditions for revisions to the work plan are provided in Section 5.0 of these Guidelines.

3.2 Progress Reporting

An LMA sponsor constructing an FSRP repair project will be required to submit progress reports during construction in sufficient detail to substantiate reimbursable expenses. Progress reports will be a key item for evaluating requests for reimbursements; reimbursement requests will only be considered for periods of work for which an acceptable progress report was received. Reimbursement requests will be subject to the following requirements:

- The minimum period between reimbursement requests will be 1 month.

- Progress reports will be required monthly unless otherwise stated in the Project Agreement. The maximum reporting period will be 3 months (i.e., quarterly).
- For repair projects with Project Agreements that establish milestones, a progress report shall be made when each milestone is completed.
- The time periods covered by successive progress reports shall be continuous and shall not overlap.
- Progress reports shall include the following information:
 - Records of expenditures (cumulative and by reporting period).
 - Description of activities since the previous report.
 - Status of the project relative to the progress schedule.
 - An estimated percentage of completion of the work.
 - The percentages of state and total funding expended.
 - Description and justification of any use of contingency funds.
 - Key technical, engineering, construction, environmental, legal or other issues that must be resolved and their impact on project schedule and constructibility.
 - The time period covered by the report.
 - A proposed new schedule for DWR's consideration if the current schedule is no longer achievable.

The Department of Finance may also require more frequent reporting. Project Agreements will provide that DWR can change reporting requirements at any time to ensure that the information needs of the Department of Finance are met.

3.3 Final Project Report

Within 90 days after the project is completed, the LMA sponsor shall submit a final project report to DWR, which shall include:

- An executive summary not exceeding two pages.
- Records of expenditures.
- A detailed accounting for contingency fund deposits, expenditures, and balances.
- A comparison of the original schedule and the actual schedule.
- A discussion of problems that occurred during the work and how the problems were resolved.
- Submittal of any required products that have not been submitted previously.
- A listing of required products previously submitted, with dates of submittal and dates of DWR's approval.
- Any mapping or spatial products produced as part of the project (see Section 3.5).
- Photographs of the before-project condition.
- Progress photographs showing project activities and techniques.
- Photographs of the completed project.

- As-built plan drawings.
- A revised Maintenance Plan, approved by DWR, as described in Section 2.2 of these Guidelines.

3.4 Record-Keeping Requirements

An LMA sponsor will be required to maintain all records and documents pertaining to a project for 5 years after completion of the work required or as otherwise required under relevant funding guidelines or regulations, whichever is longer. An LMA sponsor will also be required to make all records and documents held by the LMA sponsor pertaining to the project available for inspection and audit by DWR, the State Auditor, or other state officials during normal business hours, both during the repair project and in the 5 years following completion of the work.

DWR or state auditors may audit the records of the project at any time within 3 years after final payment of state funds.

3.5 Project Mapping and Spatial Information

Any mapping or spatial products produced as part of an FSRP repair project must be included with the final project report. At a minimum, the following spatial information must be collected and submitted to DWR:

- The location of test sites, bore holes, constructed improvements, and distinct project features.
- The elevation of any constructed or surveyed feature.
- Boundaries, such as parcel data and construction limits.

Spatial data may be created by field methods, including use of a geodetic survey, global positioning system, or by scanning maps, digitizing, aerial photography, remote sensing, photogrammetry, or combining two or more data sets.

Spatial data shall be mapped at a scale appropriate to the source data. The creation and editing of spatial data shall use any available logical constraints. The LMA sponsor shall provide a statement about how the spatial data were created, checked, and processed. Each spatial product submitted must describe the projection and include information about the coordinate system and the vertical and horizontal datum used.

4.0 INDEPENDENT REVIEW

Independent or DWR-led reviews will be required for all FSRP repair projects regardless of Project Agreement conditions. Reviews shall be defined in the work plan (Section 3.1) unless otherwise directed by DWR.

4.1 LMA Sponsor-Led Projects

For LMA sponsor-led projects DWR will require, at its sole discretion, a DWR-led or an independent review of all work products beginning with data acquisition and continuing through project completion. The extent of the review will be determined based on the project size and complexity, and will be negotiated with the the LMA during development of the Project Agreement. DWR is more likely to require an independent review when one or more of the following factors apply:

- Failure of the project would pose a significant threat to human life or critical infrastructure.
- The project involves the use of non-standard materials, techniques or designs.
- The project has unique construction sequencing (such as design/build) or an accelerated schedule.
- The project is being approved by USACE under U.S. Code Title 33 (33 USC) § 408.

In performing the independent review, DWR will apply, at its discretion, one of two approaches. In order of DWR preference, these approaches are:

- Approach 1: DWR selects a panel of independent reviewers and administers an independent review.

DWR issues the charge to the panel of independent reviewers and, in consultation with the LMA sponsor, ensures that the charge is fulfilled. Under this approach, the independent review costs will be part of the eligible project costs. Throughout the process, DWR must consult with the LMA sponsor. At the discretion of DWR, the LMA sponsor may propose more detailed instructions to be included in the charge to the panel to ensure that project-specific technical issues are addressed.

- Approach 2: At its sole discretion, DWR may allow the LMA sponsor to select the panel of independent reviewers.

DWR must review and approve the reviewers selected by the LMA sponsor as being appropriate for the project. DWR issues the charge to the panel of independent reviewers, and the LMA sponsor, in consultation with DWR, ensures that the charge is fulfilled. Costs associated with this approach are eligible project costs and are to be cost-shared in the same manner as all other eligible project costs. Throughout the process, the LMA sponsor must consult in good faith with DWR.

The independent review panel must be composed of at least two and no more than five individuals, with more reviewers (up to five) required for larger and/or more complex projects at the discretion of DWR. DWR must approve the number of reviewers assigned to an independent review panel. Reviewers must be individuals who are distinguished experts in engineering, hydrology, or other appropriate discipline. Individual independent reviewers may

be associated with firms, but all independent review work must be performed by the individual reviewer. Reviewers must be free from any real or apparent conflict of interest.

DWR may develop a list of consultants qualified to sit on independent review panels. LMA sponsors may propose consultants who are not on that list, and DWR will review these suggestions using the same criteria it employs to develop the initial list. DWR may approve those consultants who qualify and add them to the pre-approved list.

For reviews associated with work under 33 USC § 408, DWR may impose additional review requirements as needed to comply with federal guidance for complying with 33 USC § 408.

An independent review will include a review of all the LMA sponsor's pre-project activities for which credit is requested, and will include periodic reviews before, during and after construction on a regular schedule sufficient to inform DWR about the adequacy, appropriateness, and acceptability of the design and construction activities for the purpose of assuring public health, safety, welfare, and the environment. DWR and the LMA sponsor shall cooperate to ensure that reviews under do not create any unnecessary delays in design and construction activities. At a minimum, all independent reviews must consider applicable USACE requirements and DWR's current or future rural levee repair standards or the Urban Levee Design Criteria (DWR, 2012), when applicable.

Independent review shall be conducted in collaboration with DWR. DWR shall be promptly notified and invited to all meetings of the panel, and shall be provided opportunity to collaboratively develop the agenda and questions for each meeting in consultation with the LMA sponsor. All documents provided to and delivered from the panel of reviewers shall be promptly provided to DWR.

DWR retains sole discretion to require the LMA sponsor to implement the recommendations of the independent review panel. If DWR requires changes that affect the final construction of the project, such changes will be cost-shared according to the cost-sharing rules established in the Project Agreement. Such changes may not require an immediate amendment to the Project Agreement; however, changes increasing the maximum state cost-share will require an amendment to the Project Agreement before they can be funded.

Written recommendations of a reviewer or panel of reviewers under this section and the responses of the LMA sponsor and DWR (if any) shall be available to the public on DWR's FloodSAFE website at <http://www.water.ca.gov/floodsafe/>.

4.2 DWR-Led Projects

The extent of any independent review for DWR-led projects will be determined during development of the Project Agreement and will be dependent on the size and complexity of the project. The review will be generally consistent with the effort described for LMA-led projects in Section 4.1. The Project Agreement will identify the extent to which the LMA will participate in the review and approval of project design, other deliverables, and project activities.

APPENDIX C

**Provisions for Credit and
Disbursement of Funds**

1.0 INTRODUCTION

This appendix describes required provisions for obtaining credit and disbursement of funds under the Flood System Repair Project (FSRP) as defined in these Guidelines.

2.0 REQUIREMENTS FOR OBTAINING CREDIT

Under the FSRP, and at the sole discretion of Department of Water Resources (DWR), credit may be issued to the local maintaining agency (LMA) sponsor for a portion of pre-project costs. The LMA sponsor may only use approved credit to reduce the local share of eligible project costs. Approved credit is an acknowledgement that the LMA sponsor has incurred expenses that could have been covered if a Project Agreement had been in place. It does not entitle the LMA sponsor to payment. DWR will require an independent review of each project for which the LMA sponsor requests credit. The independent review process is described in Appendix B of these Guidelines.

To qualify for credit, the following conditions must be met:

- The request for issuance of credit must be submitted to DWR within 45 days after execution of the Project Agreement.
- Costs requested for credit must be incurred after DWR has issued an Eligibility Notice to the LMA for the project and before a Project Agreement is executed, or costs must represent unused credit that has been issued by DWR for another project under substantially the same terms as described in this section.
- 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 FSRP repair project as negotiated in the Project Agreement.
- Costs requested for credit must be for work performed in full compliance with all applicable federal, state, and local requirements. DWR, at its sole discretion, may waive this prohibition, particularly where an LMA's failure to secure a required permit was inadvertent. However, credit will not be offered for any costs incurred without all permits required by the Central Valley Flood Protection Board.

Costs offered for credit will be subject to the following limitations:

- Total credit issued may not exceed the LMA's share of the total project cost.
- Total credit used plus DWR's share of the total project cost may not exceed 95 percent of the total project cost.
- Total credit issued for prior projects against an FSRP repair project will be limited to the full- or limited-share costs that would have applied on the project for which it was issued.
- Credit issued for an FSRP repair project that cannot be applied to the project, or that cannot be applied due to availability of funding, may be retained and used for another project, under the same conditions as those of the project for which it is issued plus any additional conditions of the other project.

3.0 REQUIREMENTS FOR DISBURSEMENT OF FUNDS

DWR may enter into a Project Agreement before the responsible party has obtained all applicable permits, but will not disburse any state funds unless the LMA sponsor:

- Complies with all provisions of the Project Agreement.
- Has complied with all applicable federal, state, and local laws, rules and regulations.
- Has obtained all required permits.

To receive disbursements under the Project Agreement, the LMA sponsor must meet certain other requirements. Specifically, the LMA sponsor must formally acknowledge the current flood risk and make arrangements for other local agencies to acknowledge the current flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities, counties, and other agencies with flood management responsibilities located in the areas protected by the project. The resolution or resolutions must be accepted by the state in advance of adoption as to matters of both form and substance. The Project Agreement may be nullified at the sole discretion of DWR if this resolution is modified or rescinded without acknowledgement and acceptance of DWR. An LMA sponsor's application for credit or reimbursement from the federal government will not be a standard requirement for an LMA sponsor to receive disbursements for FSRP repair projects. However, DWR reserves the right to require an LMA sponsor to file an application for federal credit or reimbursement for select FSRP repair projects that may be identified to an LMA sponsor during negotiation of the Project Agreement.

3.1 Conditions of Reimbursement

State reimbursements for FSRP repair project construction will be paid to LMA sponsors as provided in the Project Agreement, which will include cost-share provisions and detailed instruction on billing and reimbursements. Project Agreements will include the provisions in the remainder of this section. If necessary, in the sole judgment of DWR, the state may make funding available earlier or in a different manner to ensure that funds will be available to an LMA when needed for construction work. Conditions for advanced payment, if applicable, will be negotiated during the Project Agreement. General provisions for advanced payment are provided in Section 3.2.

State reimbursement of LMAs will be in arrears at least quarterly but no more often than monthly at DWR's discretion, subsequent to submittal and approval of reimbursement requests (i.e., invoices) and progress reports. The LMA sponsor must submit reimbursement requests in duplicate on a summary billing form provided by DWR. DWR's summary billing form will provide a continuous record of payments, retained amounts, and other data. The LMA sponsor must provide the following information:

- The amount requested for payment, before retention, for each item or task.
- The total amount requested.
- The LMA sponsor's request number.
- The state contract number.

- The date of submittal.
- The beginning and end dates of the work covered by the requested payment. The time periods covered by successive invoices must be continuous and may not overlap without detailed explanation of any billed work attributed to past work periods, establishing the appropriateness and non-duplicative nature of the charges.
- An original signature of the LMA sponsor's officer requesting payment on both copies, in an ink colored other than black.
- One copy of records substantiating the requested payment.
- DWR will return one copy of the summary billing form to the LMA sponsor, completed with cumulative payment and retention information and other information added by DWR.

State reimbursement is subject to the following limitations:

- DWR will apply a maximum state funding of \$5,000,000 per project. DWR's Director may authorize variances to this restriction to fund projects under exceptional circumstances.
- No more than 10 percent of the total project cost may be reimbursed as a contingency, and only as such funding is justified, except with the express written approval of DWR.
- Contingency funds may only be used for an item or task in the Project Agreement with prior written approval from DWR. If the contingency funds are to be used for work other than the items or tasks in the Project Agreement, the LMA sponsor must first obtain the express written approval of DWR.
- The LMA sponsor must describe and justify the proposed use of any contingency funds, including identification of the contract item or task, in the required progress reports.
- If contingency funds are not available, cost overruns for individual contract items or tasks will be covered only to the extent to which reallocation of unexpended funds from other contract items or tasks is permitted under the Project Agreement.
- All reimbursement is subject to availability of funds.
- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor unless the LMA sponsor is in compliance with all applicable environmental laws and requirements (e.g., CEQA, environmental permits, and NEPA if federal funding or approvals are included in the project).
- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor until all required permits for the work to be reimbursed have been obtained.

3.2 General Conditions for Advance Payments

At the sole discretion of DWR, eligible project costs may be covered by advanced payments of the state cost-share to be negotiated with the LMA during development of the Project Agreement. Advances, if applicable, may be limited to specific project-related tasks required prior to project construction, such as the acquisition of property rights. When advanced payments are applied to project construction, the Project Agreement will include requirements for the LMA sponsor submit work plans at quarterly or otherwise specified intervals. Along with the work plan, the LMA sponsor will be required to provide statements of incurred eligible project costs. If the state determines advances in that advance funding period exceed actual costs in that same period, such amounts may be applied against advances in succeeding periods. The state's total amount of all advance payments shall not

exceed 75 percent of the total estimated cost in the state's share of eligible project costs payable under the Funding Agreement.

If the state determines that advances exceed the state's share of total actual eligible project costs, the state may withhold advance payments equal to amounts advanced in excess of the state's share of eligible project costs, but only after an LMA sponsor has had an opportunity to meet and discuss with the state any alleged excess payments. Any advance payments that exceed the state's share of actual eligible project costs shall be reconciled and repaid to DWR at the end of each quarter. All advance payments will be used only to pay eligible project costs for performing all or part of a task or item in the FSRP repair project's budget.

3.3 Retention

DWR will retain 5 percent of all approved payments to assure satisfactory completion of individual items or tasks. The approved completion of items or tasks will be the basis of reimbursement of retained funds. No reimbursement of retention will be made for subtasks, partially completed items, or partially completed tasks.

When all work associated with an item or task described in the work plan has been completed to the satisfaction of DWR, and all required products for that item or task have been submitted to and approved by DWR, an LMA sponsor may, upon written request, receive payment of retained funds. DWR, at its sole discretion, may pay the retained funds for that item or task to the LMA sponsor. After the retained funds for an item or task have been paid, no further payment will be made for that item or task.

3.4 Final Payment

DWR will notify an LMA sponsor that the project is approved and will release any remaining retained funds when the following criteria are satisfied:

- The work is completed to the satisfaction of DWR.
- DWR has approved all products required by the Project Agreement as provided by the LMA sponsor.
- The LMA sponsor has provided, and DWR has approved, a final project report as described in Appendix B of these Guidelines.
- Transfer of any property rights to the state, if applicable, are completed.

APPENDIX D

Cost-Sharing Examples

1.0 COST-SHARING EXAMPLE 1: LITTLE RIVER LEVEE PROJECT

Assume that a local maintaining agency (LMA) is negotiating a Project Agreement with the Department of Water Resources (DWR) under the Flood System Repair Project (FSRP) for the Little River Levee Project. The Little River Levee Project involves repairs to a seepage berm with an estimated total project cost of \$1,000,000. The repair will be adjacent to the intersection of two state highways, which would receive a significant increase in flood protection upon project completion. The project also includes \$70,000 for improvements to a parking area and an access road to a boat launch facility adjacent to the repair.

Under base cost share provisions described in Section 4.5.1 of the Guidelines, the minimum state cost-share is 50 percent. In addition, the \$70,000 modifications to the parking area/access road, representing between 5% and 10% of the total project cost, qualifies the project for a 5% increase in state cost-share associated with the recreation objective. The project's increased flood benefit to two state facilities qualifies the project for a 10 percent increase in the state cost-share due to contributions to the State Facility Objective.

Thus, the revised state cost-share for the Little River Levee Project with respect to the base cost share provisions described in Section 4.5.1 is as follows:

Base state cost-share:	50 percent
Increased state cost-share due to contribution to Recreation Objective:	5 percent
Increased state cost-share due to contribution to state Facilities Objective:	10 percent
Total revised state cost-share:	65 percent

The LMA has requested an enhanced cost-share as defined in Section 4.5.2 of the Guidelines. DWR has reviewed available maintenance and inspection data and additional information provided by the LMA, and has determined that the LMA has acceptable performance with the exception of:

- Several of the LMA's maintenance staff have not completed flood fight methods and environmental awareness training
- The LMA's rodent abatement management program is minimally acceptable
- The LMAs 5-year plan for routine/non-routine maintenance is lacking in several minimum requirements.

The LMA has also signed a funding agreement with DWR under which it is serving as lead agency in the development of a Regional Flood Management Plan as a component of the Central Valley Flood Protection Plan.

The Little River Levee Project qualifies for enhanced state cost-share specific under the FSRP as a result of these activities as described in Section 4.5 of the Guidelines. Table D-1 summarizes the LMA's rating score and weighted score. The score is 32 with an LMA Maintenance Quality Index of 26, which means the project qualifies for a 26 percent increase in state cost-share. However, these Guidelines limit the total increased state cost-share for all cost-share enhancements other than those related to the Disadvantaged Area Objective of the Cost-Share Formula to 35 percent.

Therefore, although the project meets the criteria for a 91 percent state cost-share (65 percent plus 26 percent), the Project Agreement for the Little River Levee Project would reflect a state cost-share of 85 percent and an LMA cost-share of 15 percent.

EXAMPLE

Table D-1. Cost-Share Incentive Performance Score: Little River Levee Project

Number	Criteria Description	Rating Score ¹	Weight Factor	Weighted Score
LMA Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).	2	0.5	1
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)	2	1	2
3	A summary of maintenance performed by the LMA during the previous fiscal year.	2	1	2
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.	2	0.5	1
LMA Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.	2	2	4
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.	2	2	4
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: the standardized emergency management system, the national incident management system and incident command system (SEMS/NIMS/ICS) introduction, flood-fight methods and environmental awareness.	0	1	0
LMA Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.	2	1.5	3
2	Rodent abatement program, entailing an effective plan, financial resources, practice, and inspections.	1	1	1
3	Vegetation management in compliance with current DWR standards and policies.	2	1	2
4	Encroachment management: inspections, evaluations, and enforcement.	2	1	2
5	Routine maintenance of flood control facilities.	2	2.5	5
6	Participation in a Corridor Management Strategy (see 2012 Central Valley Flood Protection Plan pages 4 through 8 and Attachment 2, pages 5 through 23) or similar planning effort.	2	1.5	3
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, annual budgets.	0	1.5	0
LMA Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, Integrated Regional Water Management region, or multi-benefit project.	2	1.0	2
2	Collaboration with LMA's in same region or leveed area.	0	1.5	0
Total weighted score:				32
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA maintenance quality index score (maximum = 35):				26

¹Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2

2.0 COST-SHARING EXAMPLE 2: LEVEE DISTRICT X PROJECT

Assume that an LMA is negotiating a Project Agreement with DWR under the FSRP for the Levee District X Project, which will involve work at a number of sites along a small levee district's facilities to address erosion and seepage and upgrades to a pump station that is insufficient for the design capacity. The levee district encircles a small town and adjacent farmlands, all of which would receive flood control benefits from the project. The estimated total project cost is \$3,000,000. Under federal funding, a \$5,000,000 riparian habitat restoration project has recently been completed adjacent to one of the seepage sites that would be repaired by this project. The LMA is proposing to negotiate a conservation easement with a willing landowner within the levee district adjacent to the restoration site as an open space buffer. The cost of the conservation easement is \$350,000. At the time of Project Agreement negotiations, the California median annual household income is \$61,000 and the benefited area's median annual household income is \$43,000. According to base cost share provisions described in Section 4.5.1 of the Guidelines, the minimum state cost-share is 50 percent. This project does not qualify for credit for any part of the \$5,000,000 riparian habitat restoration project because the project was fully funded by federal sources. However, the \$350,000 conservation easement, which represents between 10 and 15 percent of the total project cost, qualifies the project for a 10 percent increase in the state cost-share due to contributions to the Open Space Objective.

The project also qualifies for increased state cost-share under the Disadvantaged Area Objective Enhancement of the DWR Cost-Share Formula. The benefited area's median annual household income is 70.5 percent of the California median annual household income ($\$43,000/\$61,000 = 70.5$ percent). The benefited area's median annual household income is 9.5 percent less than the 80 percent threshold for disadvantaged household income. Rounding to the nearest 10 percent, the project qualifies for a 10 percent increased state cost-share under the Disadvantaged Area Objective Enhancement of the base cost share provisions described in Section 4.5.1 of the Guidelines.

The revised state cost-share for the Project with respect to the base cost share provisions described in Section 4.5.1 is:

Base state cost-share:	50 percent
Increased state cost-share due to contribution to Open Space Objective:	10 percent
Increased state cost-share due to contribution to Disadvantaged Area Objective:	10 percent
Total revised state cost-share:	70 percent

The LMA has requested enhanced cost-share pursuant to Section 4.5.2 of these Guidelines. DWR has reviewed available maintenance and inspection data and additional information provided by the LMA, and has determined that the LMA has acceptable performance with the exception of the following:

- The levee access roads are minimally acceptable for flood fighting purposes
- The LMA's 5-year plan has deficiencies and is considered minimally acceptable

The Levee District X Project qualifies for enhanced state cost-share specific to the FSRP as a result of these activities. Table D-2 summarizes the LMA's rating score and weighted score. The weighted score is 32, with an LMA maintenance quality score of 26, which means the project qualifies for a 26 percent increase in state cost-share.

The total base state cost-share and the FSRP cost-share enhancements is 96 percent (i.e., 70 percent plus 26 percent). However, the cost share provisions identified in Section 4.5 of the Guidelines limit the state cost-share to no more than 90 percent for disadvantaged areas. Therefore, although the project meets the criteria for a 96 percent state cost-share, the Project Agreement with Levee District X would reflect a state cost-share of 90 percent and an LMA cost-share of 10 percent.

Table D-2. Cost-Share Incentive Performance Score – Levee District X Project

Number	Criteria Description	Rating Score ¹	Weight Factor	Weighted Score
LMA Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).	2	0.5	1
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)	2	1	2
3	A summary of maintenance performed by the LMA during the previous fiscal year.	2	1	2
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.	2	0.5	1
LMA Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.	2	2	4
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.	2	2	4
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: a) Standardized emergency management system, national incident management system, and incident command system (SEMS/NIMS/ICS) introduction; b) Flood Fight Methods; and c) Environmental Awareness	2	1	2
LMA Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.	2	1.5	1.5
2	Rodent abatement program, entailing an effective plan, financial resources, practice, and inspections.	1	1	1
3	Vegetation management in compliance with current DWR standards and policies.	2	1	2
4	Encroachment management: inspections, evaluations, and enforcement.	2	1	2
5	Routine maintenance of flood control facilities.	2	2.5	5
6	Participation in a Corridor Management Strategy (see 2012 CVFPP - p. 4-8 and Att. 2, p. 5-23) or similar planning effort.	2	1.5	3
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, annual budgets.	1	1.5	1.5
LMA Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, Integrated Regional Water Management region, or multi-benefit project	0	1.0	0
2	Collaboration with LMA's in same Region or Leveed Area	0	1.5	0
Total weighted score:				32
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA maintenance quality index score (maximum = 35):				26
¹ Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2				

EXAMPLE

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

RESOLUTION No. 15-01

FLOOD SYSTEM REPAIR PROJECT

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

WHEREAS, The Department of Water Resources ("DWR") has developed and is implementing the Flood System Repair Project ("FSRP") to assist local maintaining agencies ("LMAs") in reducing flood risks by providing technical and financial support for the repair of documented critical problems to flood control facilities of the State Plan of Flood Control ("SPFC") with a focus on non-urban areas of the Sacramento and San Joaquin River systems;

WHEREAS, the State of California, acting through the Central Valley Flood Protection Board (the "Board"), provided maintenance and operation assurances to the federal government upon completion of 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 (together, the "Projects");

WHEREAS, State law provides that, except for those certain areas enumerated by statute and made the responsibility of the State therein and those areas the maintenance and operation of which is provided for in federal law, the maintenance and operation of the Projects is the responsibility of local maintaining agencies;

WHEREAS, DWR has developed FSRP guidelines through the public review process and which were reviewed by the Board and such guidelines require participating LMAs to provide operation and maintenance assurances to the Board for repair projects;

WHEREAS, DWR has developed and the Board has reviewed the form of agreement to be executed between the Board and the LMAs for the LMA of a funded FSRP project to provide assurances to the Board for the operation and maintenance of Project facilities consistent with State law.

NOW, THEREFORE, BE IT RESOLVED that the form of Assurance Agreement attached hereto as Exhibit A is approved and adopted;

RESOLVED FURTHER, that the Executive Officer is authorized and directed to execute Assurance Agreements with local maintaining agencies that receive FSRP funding in substantially the form attached hereto as Exhibit A;

RESOLVED FURTHER, that the Assurance Agreements between the Board and the following Levee Maintaining Areas are hereby ratified, approved and confirmed.

Agreement No.	LMA Name	Repair Type	Execution Date
2014 FSRP LSJLD 01	Lower San Joaquin Levee District	All-Weather Access Road Repair (25 mi)	8/15/2014
2014 FSRP LSJLD 02	Lower San Joaquin Levee District	Electrical Control Structure Repair	8/15/2014
2014 FSRP RD2085 01	RD 2085 (San Joaquin Co.)	All-Weather Access Road Repair (6 miles)	8/15/2014
2014 FSRP RD2085 02	RD 2085 (San Joaquin Co.)	Critical erosion repair at San Joaquin River LM2.24	8/15/2014
2014-FSRP-RD1600-01	RD 1600	All-Weather Access Road Repair (13.6 miles)	10/13/2014
2014-FSRP-RD1001-01	RD 1001	All-Weather Access Road Repair (10.60 miles)	10/13/2014
2014-FSRP-RD2063-01	RD 2063	All-Weather Access Road Repair (10.63 miles)	10/13/2014

Dated: _____

By _____
William H. (Bill) Edgar
President

By _____
Jane Dolan
Secretary

Approved as to Legal Form and Sufficiency

Senior Staff Counsel

Dated: _____

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

RESOLUTION No. 15-01

FLOOD SYSTEM REPAIR PROJECT

EXHIBIT A – FSRP Project Agreement Exhibits

(O&M Agreement contained in Exhibit D of this document)

[Note to Preparer:

These exhibit templates are intended to accompany the form of Critical Repairs Project Agreement.

Each contains notes, required inserts and optional contract clauses in brackets. 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.]

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, prepare may reference and include the Pre-Feasibility Cost Estimate Report in this exhibit.]

Directions: Funding Recipient shall prepare an Overall Work Plan, Overall Project Budget, and Overall Project Schedule. In preparing these documents, if the Project has separable elements, Funding Recipient shall define the Project Elements and provide separate budgets and schedules for each Project Element. If any Project Element can be further divided into Project Features, Funding Recipient shall define the Project Features and provide separate budgets and schedules for each Project Feature. If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the Overall Work Plan should include information regarding the scope of the Project-Associated Work and a budget and schedule for this work in accordance with Paragraph 23 of the Project Agreement.

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

The Overall Work Plan should be organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE

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 O&M 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, Flood System Repair 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 included 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 Flood System Repair 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 Flood System Repair 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

If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the work plans and reports described in this Exhibit should include information regarding the scope of the Project-Associated Work. The Funding Recipient will clearly distinguish between work included in the Overall Work Plan, which will be funded by the State under this Project Agreement, and Project-Associated Work, which will not be funded by the State under this Project Agreement. 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 Flood System Repair 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 Flood System Repair 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;
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project.

COST INFORMATION

- Listing showing costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the project and which of these costs are Eligible Project Costs;
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan as well as the Quarterly Work Plans;
- A list of any changes approved to the budget in accordance with 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.

TEMPLATE

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 ("O&M 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 _____, 2014 in view of the following circumstances:

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

for project 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].

2. State funding has become available for the Funded Project:
 - The voters of California approved Proposition 1E on November 7, 2006, making available bond funds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for the Flood System Repair Project ("FSRP").
 - The Funding Recipient has signed a Project Agreement. This Project Agreement is between the State of California Department of Water Resources and *[Funding Recipient]* for *[Funded Project Name]* ("Project Agreement").
 - The Project Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, according to the current Operation and Maintenance Manual(s) ("O&M") of Funded Projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.
 - The Department has agreed to enter into the Project Agreement on the condition that the Funding Recipient enters into this O&M Agreement under which the Board will oversee O&M for the Funded Project, as defined herein, for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Funded Project at this time, but in anticipation that federal funds may become available eventually:

- *[Note: include the following if the Project Agreement contained a requirement that the Funding Recipient seek a federal contribution. The Project Agreement requires the Funding Recipient to seek credit for the expenditures made under the Project Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.]*
 - The parties agree that this O&M Agreement may be superseded by one or more agreements acceptable to the USACE, the Department, and the Board that gives satisfactory assurances to the federal government, the Department, and the Board that the required local cooperation will be furnished in connection with the Funded Project.
4. The Funding Recipient already has responsibility for O&M for the existing portions of the Funded Project under California Water Code Section 12642 which states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this O&M Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this O&M Agreement that Funding Recipient will be responsible for O&M of the Funded 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 O&M of the Funded Project.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this O&M 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 Funded Project" means a completed portion of the Funded 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 Funded 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 O&M Agreement.

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

"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.

"O&M" means operation and maintenance of the Funded Project.

"O&M Agreement" means this agreement between the Board and the *[Insert name of Funding Recipient]* for O&M of the Funded 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 Agreement**” means that certain agreement between the Department and the *[Funding Recipient]* for *[FundedProject Name]* dated *[insert date]*.

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

“**Project Site**” means the location of the Funded Project.

“**State**” means the State of California, acting by and through the Board.

“**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 Funded Project.
2. To perform O&M for the Funded Project, including all mitigation features of the Funded 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 O&M for all Funded Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Funded Project and the flood control system of which the Funded Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
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 and damages, including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the Funded Project.
4. 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 Funded Project for which the State may be held liable and any claims based upon inverse condemnation.
5. If the Funding Recipient has failed or refused to perform the obligations set forth in this O&M 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 O&M Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of law, then the State may take appropriate actions under this O&M Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Funded Project to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a

work plan and present it to the Funding Recipient with instructions that if the Funding Recipient does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this O&M Agreement. No completion, operation and maintenance by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this O&M Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this O&M Agreement.

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

B. Specific Obligations Arising as a Result of the Funded 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 O&M of the Funded Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Funded Project and any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Funded Project and (2) shall annually update the Interim Operation and Maintenance Manual for the Funded 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 O&M in accordance with any revised version of the Operation and Maintenance Manual for the Funded 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 Funded 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 AB 5 (Wolk), 2007 California Statute 366 (to be codified at California Water Code § 9140(a)) that pertain to the Funded 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 O&M 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 Funded Project construction and O&M to the extent the Funding Recipient fails to comply with its obligations under this O&M 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 Funded Project contain hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this O&M Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate and maintain the Funded 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 Funded 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 Funded 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 Funded Project O&M 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 O&M Agreement. In performing the obligations called for in this O&M Agreement, the Funding Recipient shall notify the State when it initially retains, employs, or uses any agencies or firms. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this O&M Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

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

SECTION IV: Procedures for Reimbursing the State

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

SECTION V: Disputes

Before any party to the O&M Agreement may bring suit in any court concerning an issue relating to this O&M 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 O&M Agreement is the date it is signed by all parties. The O&M 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 O&M 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 O&M 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
Acting Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 151
Sacramento, CA 95821

With a copy to:

Mr. David J. W. Wheeldon
FSRP 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 O&M Agreement incorporates by reference the standard conditions that are included in Attachment D-1 to this O&M 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 O&M Agreement. This resolution is substantially the same as the draft resolution provided in Attachment D-2 to this O&M Agreement.

(Remainder of page intentionally left blank)

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

**Central Valley
Flood Protection Board**

By _____

Name _____

Title _____

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name _____

Title Asst. Chief Counsel

Date _____

Funding Recipient

By _____

Name _____

Title _____

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name _____

Title _____

Date _____

TEMPLATE

Exhibit D-1
STANDARD CONDITIONS

1. GOVERNING LAW: This O&M 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 O&M Agreement.
3. AMENDMENT: This O&M 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 O&M Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this O&M 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 O&M 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 O&M Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this O&M Agreement, and State may take any other action it deems necessary to protect its interests, after complying with Paragraph V of the O&M Agreement.
6. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Funded 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 O&M Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
7. NO THIRD PARTY RIGHTS: The parties to this O&M Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this O&M Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. OPINIONS AND DETERMINATIONS: Where the terms of this O&M Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. SUIT ON O&M AGREEMENT: Each of the parties hereto may sue and be sued with respect to this O&M Agreement.
10. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this O&M Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. SEVERABILITY: Should any portion of this O&M Agreement be determined to be void or unenforceable, such shall be severed from the whole and the O&M Agreement shall continue as modified.

12. **WAIVER OF RIGHTS:** None of the provisions of this O&M 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 O&M Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the O&M Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this O&M Agreement should Funding Recipient fail to perform the requirements of this O&M Agreement at the time and in the manner herein provided or in the event of a default under Paragraph 21 of the Project Agreement.
14. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the O&M Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST**
- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c) **Employees of the Funding Recipient:** Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
 - 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.
16. **WORKERS' COMPENSATION:** Funding Recipient affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this O&M Agreement and will make its contractors and subcontractors aware of this provision.
17. **AMERICANS WITH DISABILITIES ACT:** By signing this O&M Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
18. **NONDISCRIMINATION CLAUSE:** During the performance of this O&M Agreement, Funding Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital

status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

19. DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this O&M 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 O&M 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 O&M Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

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

20. UNION ORGANIZING: Funding Recipient, by signing this O&M Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this O&M Agreement. Furthermore, Funding Recipient, by signing this O&M Agreement, hereby certifies that:

- a) No State funds disbursed by this O&M 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 O&M Agreement to show those funds were allocated to that expenditure.
 - c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this O&M Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this O&M Agreement, such reports, data, information, and certifications as may be reasonably required by State. RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this O&M Agreement shall be in the public domain. Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this O&M Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
23. CHILD SUPPORT COMPLIANCE ACT: For any O&M Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:
- a) The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. PRIORITY HIRING CONSIDERATIONS: If this O&M Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the O&M Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code § 10353.
25. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this O&M Agreement, under penalty of perjury under the laws of State of California that Funding Recipient is in compliance with Public Contract Code section 10295.3
26. FUNDING RECIPIENT NAME CHANGE: Approval of the State's Project Manager is required to change the Funding Recipient's name as listed on this O&M Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
27. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Funding Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to

Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
(3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

TEMPLATE

Exhibit D-2: Draft Resolution

<p>Resolved by the _____ <i>(Governing body, city council, or other)</i></p> <p>of the _____ <i>(Funding Recipient-agency, city, county, or other)</i></p> <p>that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to _____ <i>(Agency, city, county, or other)</i></p> <p>by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: _____ <i>(Project title)</i></p> <p>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 _____ <i>(Agency, city, county, or other)</i></p> <p>to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of _____ <i>(Project title)</i></p> <p>Therefore, the _____ <i>(Presiding officer, president, city manager, or other official)</i></p> <p>of the _____ is hereby authorized and directed to <i>(Agency, city, county, or other)</i></p> <p>sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.</p> <p><i>Passed and adopted</i> at a regular meeting of the _____ <i>(Board of Directors, Supervisors, etc.)</i></p> <p>of the _____ <i>(Name of Funding Recipient)</i></p> <p>on _____ <i>(Date)</i></p> <div style="display: flex; align-items: flex-start; margin-top: 20px;"><div style="flex: 1; text-align: center;"><div style="border: 1px solid black; border-radius: 50%; width: 150px; height: 150px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"><p>Affix official seal here</p></div></div><div style="flex: 2; padding-left: 20px;"><p>Authorized Signature _____</p><p>Printed Name _____</p><p>Title _____</p><p>Clerk/Secretary _____</p></div></div>	<p>Resolution No. _____</p>
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Exhibit E DRAFT RESOLUTION ACCEPTING FUNDS

Resolution No. _____

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

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

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

- 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 O&M, 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 can not be justified through the appraisal process, will require prior approval by State's Program Management personnel in concurrence with the State's Real Estate Branch, Chief.

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

- 6) **MEMORANDUM OF SETTLEMENT:** 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 State cost share of total Project costs for approved acquisitions of necessary Project lands, easements, and rights-of-way. Payment to Funding Recipient for any lands, easements, or rights of way purchased, and relocations made prior to execution of the Agreement, and/or prior to final determination by State of the extent of necessary real estate requirements for the Project, is subject to adjustment during the final accounting of costs shared between State and Funding Recipient.

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

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 O&M 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 O&M 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. O&M Agreement (fully executed)
 - 5. Project Associated Work Report (if required because some segments are constructed with the Project but not funded by the FSRP)
- 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. If the Funding Recipient has received an increased cost share for the Supplemental Benefits objectives of habitat, open-space, recreation, or a combination thereof, a summary of the payments made by the Funding Recipient and any adjustments made in accordance with the process set forth in Exhibit H-1.

III. POST CONSTRUCTION PERFORMANCE REPORT

In anticipation of the report required per the O&M 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

★

Exhibit H-1

ACCOUNTING FOR CONTRIBUTIONS TOWARD CERTAIN SUPPLEMENTAL BENEFITS

[To be completed for Projects which claim an increased State cost-share for contributions to the habitat, open-space, recreation, or combination objectives]

At the time of execution of this Project Agreement the State's cost-share reflects an increase for contributions toward certain Supplemental Benefits. The Funding Recipient has provided a Supplemental Benefits Baseline Report ("Baseline Report"). This Baseline Report includes:

- An allocation of Eligible Project Costs included in the budget which is part of the Overall Work Plan which shows the Total Project Cost and which costs are to be incurred to: (1) attain the desired Level of Protection; (2) provide mitigation required by permits or by CEQA or NEPA; or (3) attain Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- A list of requirements that must be met by the Funding Recipient in order to establish that the Funding Recipient is entitled to an increased cost-share for the Supplemental Benefits claimed by the Funding Recipient. *[Requirements shall be determined by the State on a case-by-case basis before the Project Agreement is signed.]*

The Funding Recipient has indicated that it will make contributions in excess of the [5%*] threshold for contributions toward the habitat, open-space, recreation, or combination objectives. Specifically, the [5%] threshold for the Project is _____ *[insert dollar amount for [5%*] of Total Project Costs]* and the Funding Recipient has indicated that contributions will be made toward the attainment of the *[insert name of objective - i.e. habitat, open-space, recreation, or combination]* objectives in the amount indicated:

_____ *[Insert dollar amounts for contribution Funding Recipient indicated it would make as part of the Cost-Share Recommendation and Report submitted with the Application in order to qualify for an increased cost-share for providing a Supplemental Benefit.]*

- Before close-out of a Project for which contributions were made, the Funding Recipient shall provide a Supplemental Benefits Final Report which shall provide information regarding the actual contributions made. Specifically, the Final Report shall include, at a minimum: A discussion of the difference between the actual and planned Eligible Project Costs included in the Baseline Report which were allocated to attainment of Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- A discussion of the difference between the actual and planned Eligible Project Costs included in the Baseline Report.
- Copies of invoices for all Eligible Project Costs allocated to attain Supplemental Benefits by meeting the habitat, open-space, recreation, or combination objectives.
- Proof that the Funding Recipient has met the requirements for eligibility for additional cost-sharing stated in the Baseline Report.

If the contributions for habitat, open-space, recreation, or combination objectives are not the same as those in the Baseline Report, adjustments to the cost-sharing formula set forth in Paragraph 8 (a) of the Project Agreement shall be made according to the following rules:

- For contributions of less than 5%, the State's cost share percentage shall be determined based upon no contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 5% or more and less than 10%, the State's cost share percentage shall be determined based upon a 5% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.

- For contributions of 10% or more and less than 15%, the State' cost share percentage shall be determined based upon a 10% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 15% or more and less than 20%, the State' cost share percentage shall be determined based upon a 15% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.
- For contributions of 20% or more, the State' cost share percentage shall be determined based upon a 20% contribution and shall be ___ % *[insert State's cost-sharing percentage]*.

The Funding Recipient shall also provide a plan for reconciliation of accounts and financial closeout which reflects this retroactive change in the State's cost-share.

If a Funding Recipient fails to provide the Supplemental Benefits it agreed to complete in exchange for a higher State cost share under Paragraph 8, and the Funding Recipient refuses to return any excess payment, the State may withhold funds from future scheduled payments to the Funding Recipient, consistent with Paragraphs 19 and 20 of this agreement, and take other appropriate actions.

An increase in the State's cost-share shall be subject to the requirements of Paragraph 30 of the Project Agreement.

*[*Note: This Exhibit assumes that the Funding Recipient has indicated that it will make a contribution to only one objective and only for an amount that exceeds the 5% threshold. If the Funding Recipient intends to make a contribution which exceeds the 10%, 15%, or 20% thresholds, the wording of this Exhibit shall be modified accordingly. To the degree that the State's cost share percentage is based on State Transportation Facilities or State Water Supply Facilities, then the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives would not be available due to the 70% cap on the State cost share percentage attainable by Supplemental Benefits. Similarly, the 90% cap on the State cost share percentage may limit the availability of the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives.]*

Exhibit I

STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING MATCH 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 funded 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) Guidelines, policy, and 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.

Funding Match Documentation

Funding Match (often referred to as cost share) consists of non-State funds, including in-kind services. In-kind services are defined as work performed (i.e., dollar value of non-cash contributions) by the Funding Recipient (and potentially other parties) directly related to the execution of the funded project. Examples include volunteer services, equipment use, and use of facilities. The cost of in-kind service can be counted as funding match in-lieu of actual funds (or revenue) provide by the Funding Recipient. Other funding match and in-kind service eligibility conditions may apply. Provide below is guidance for documenting funding match with and without in-kind services.

1. Although tracked separately, in-kind services shall be documented and, to the extent feasible, supported by the same methods used by the Funding Recipient for its own employees. Such documentation should include the following:
 - a. Detailed description of the contributed item(s) or service(s)
 - b. Purpose for which the contribution was made (tied to project work plan)
 - c. Name of contributing organization and date of contribution
 - d. Real or approximate value of contribution. Who valued the contribution and how was the value determined? (e.g., actual, appraisal, fair market value, etc.). Justification of rate. (See item #4, below)
 - e. Person's name and the function of the contributing person
 - f. Number of hours contributed
 - g. If multiple sources exist, these should be summarized on a table with summed charges
 - h. Source of contribution if it was provided by, obtained with, or supported by government funds
2. Rates for volunteer or in-kind services shall be consistent with those paid for similar work in the Funding Recipient organization. For example, volunteer service of clearing vegetation performed by an attorney shall be valued at a fair market value for this service, not the rate for professional legal services. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market. Paid fringe benefits that are reasonable, allowable and allocable may be included in the valuation.

3. Funding match contribution (including in kind services) shall be for costs and services directly attributed to activities included in the Funding Agreement. These services, furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as in-kind if the activities are an integral and necessary part of the project funded by the Funding Agreement.
4. Cash contributions made to a project shall be documented as revenue and in-kind services as expenditure. These costs should be tracked separately in the Funding Recipient's accounting system.

TEMPLATE