


AGREEMENT NUMBER 4600012026
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME
Department of Water Resources
 CONTRACTOR'S NAME
San Joaquin Area Flood Control Agency (SJAFCA)
- The term of this Agreement is: **June 1, 2017** through **June 30, 2021**
 This agreement shall not become effective until approved by the Department of General Services.
- The maximum amount of this Agreement is: **\$ 22,309,666.00**
 Twenty-two million, three hundred nine thousand, six hundred sixty-six and zero cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

See attached Funding Agreement Between the State of California Department of Water Resources and the San Joaquin Area Flood Control Agency (SJAFCA) for the Engineering and Construction for the Smith Canal Gate Project Under the Flood System Repair Project of the California Disaster Preparedness and Flood Prevention Bond Act of 2006.

Signatures appear on page 25 of 72 of the Project

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only 
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		Approved as to legal form and sufficiency Asst. Chief Council, DWR
STATE OF CALIFORNIA		
AGENCY NAME	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

Pro Forma Standard Agreement

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

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

FOR

SMITH CANAL GATE

FUNDED UNDER THE
URBAN FLOOD RISK REDUCTION PROGRAM

OF

THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

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STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
FUNDING AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
UNDER THE CALIFORNIA DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF
2006
(Public Resources Code section 5096.800 et seq.)

THIS FUNDING AGREEMENT, entered into by and between State of California, acting by and through the Department of Water Resources, herein referred to as the "State" and the *San Joaquin Area Flood Control Agency*, herein referred to as "SJAFCA", a public agency in the County of *San Joaquin*, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

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

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

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

"Basin:" A separable hydraulic area protected by a system of flood-management infrastructure.

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

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

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

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

“Eligible Project Costs:” The reasonable and necessary actual costs associated with the Project which are described in Paragraph 7, to the extent to which they are to be counted toward the Total Project Cost.

“Exhibits Binder:” The most current version of the Urban Flood Risk Reduction Program (UFRR), Land Acquisition Process, Exhibits Binder comprised of State approved standards and requirements for all UFRR land acquisition and related real estate activities. The Exhibits Binder is a separate document and is hereby incorporated by reference into this Funding Agreement.

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

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

“Level of Protection:” Relates to 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”) measured in accordance with the Urban Levee Design Criteria (May 2012) in urban areas. 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.

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

“Overall Work Plan:” The plan described in Paragraph 22 and Exhibit A.

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

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

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

“Project Completion Report:” The report required by Paragraph 22 and further described in Exhibit H.

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

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

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

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

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

“Real Estate Strip Maps:” A color map with aerial background of each property acquisition that clearly shows all of the real property rights acquired and to be acquired and the intended future use of the real property upon the completion of the Project.

“Real Estate Support Costs:” Reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney’s services fees, engineering services fees, court costs, and title and closing costs.

“Relocation Assistance Costs:” 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 Gov. Code, § 7260 et seq.; California Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, § 6000 et seq.); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (federal regulations at 49 C.F.R. part 24).

“Relocation Assistance Plan:” 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 Gov. Code, § 7260 et seq.; California Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, § 6000 et seq.); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (federal regulations at 49 C.F.R. part 24).

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

“Setback Levee:” A new levee (and the associated real estate) which, except for the tie-ins, is constructed completely separate from an existing levee which allows for removal of the existing levee and creation of additional floodplain connected to the stream. In the Sacramento-San Joaquin Delta (Delta), a setback levee may not necessarily result in removal of the existing levee.

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

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

“State Project Manager:” Representative for the State that will receive all notices, demands, requests, consents, or approvals that are required under the Funding 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:” A Statement of Incurred costs submitted pursuant to Paragraph 15.

“Supplemental Benefits:” Benefits associated with the 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:” 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.

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

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

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing an Urban Flood Risk Reduction Program Project pursuant to Chapter 1.699 (commencing with section 5096.800) of Division 5 of the Public Resources Code. Funds may be used only as provided in this Funding Agreement for Eligible Project Costs for the Project described in Exhibit A, Overall Work Plan. The Overall Work Plan includes Project Elements and Project Features as defined in the Overall Work Plan. The Funding Recipient may also construct Betterments, but the additional cost of Betterments will not be considered Eligible Project Costs. The Overall Work Plan shall separately describe any Betterments and any other Project-Associated Work, but will not be funded under this Funding Agreement.

This Funding Agreement governs the work described in the Overall Work Plan. If the Overall Work Plan includes design and construction work, such work can be completed in phases. The Funding Recipient may begin design work before its environmental documents are complete, but may not begin the construction portion of the approved Project until all environmental work for the Project Element or Project Feature has concluded. An Overall Work Plan that contains both design and construction work has an additional, mid-Project, State approval requirement; when the Project work transitions from design to construction, the State 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 State for each subsequent Project Element or Project Feature. As described further in Paragraph 12 of this Agreement, this approval letter may not be issued if the Funding Recipient has not completed all necessary environmental work for a Project Element or Project Feature.

2. **TERM OF FUNDING AGREEMENT.** The term of the Funding Agreement shall be from the latest date of execution by the State and approval by the Department of General Services through June 30, 2021
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 or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Exhibit A-1-B, the State reserves the right to exercise the withholding remedies provided in Paragraphs 17-19 of this Agreement.

4. **PROJECT COST.** The total reasonable cost of designing and constructing the Project is estimated to be \$37,552,476.
5. **LIMIT ON STATE FUNDS.** Pursuant to the California Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) 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 Funding Agreement for the State cost share an amount not to exceed \$22,309,666, except as provided in Paragraph 29. 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 Pooled Money Investment Board 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.
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. To determine the eligibility of certain types of costs, the State intends to use the same guidance document that USACE would use: Office of Management and Budget (OMB) Circular A-87. Also, for travel expenses, DWR form 9580 will be used as required by the State Project Manager. Except as otherwise provided in Paragraph 14(b), Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after November 7, 2006, (date of passage of Proposition 1E). Eligible costs are listed in the UFRR Program Guidelines in Section 6.

Tribal monitors are an eligible project cost as long as the circumstances require tribal monitors and the tribal monitors possess the necessary knowledge and skills. Tribal monitors are an eligible project cost: (1) when tribal monitors are required by a monitoring program adopted pursuant to Public Resources Code section 21081.6; (2) when, after the environmental document is certified pursuant to the California Environmental Quality Act (CEQA), information is submitted to the Funding Recipient regarding the presence of cultural resources; (3) when, during implementation of the Project, cultural resources are discovered on the Project site; or (4) upon order by a court of competent jurisdiction. The extent of such monitoring will vary depending on the size, length, and complexity of the Project and the site's sensitivity for tribal cultural resources. The Funding Recipient shall submit a tribal cultural resources mitigation and monitoring plan, if not already included in the environmental document, for State's consideration. Tribal monitors shall possess the necessary knowledge, skills, abilities, and experience to serve as a tribal monitor for the Project, including but not limited to knowledge about the subject Native American culture and traditions and familiarity with archaeological practices and federal and state laws regarding Native American cultural concerns.

8. **COST SHARING.**
 - a) Eligible Project Costs will be shared by the State and the Funding Recipient on the following basis:

The State will pay sixty three percent (63%) of Eligible Project Costs. Funding Recipient will be responsible for paying the balance. The Funding Recipient may not use other State funds for its local share unless the State agency providing those funds is specifically authorized by the Legislature to allow the Funding Recipient to use the funds for its local share and the State agency gives the Funding Recipient its written permission to use the funds provided by the State agency for the local share.

- c) 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 the Project, a Project Element, or a Project Feature, Funding Recipient will, to the extent permitted by applicable law, provide such federal credit/reimbursement to the State in proportion to the State's contribution to the Project, Project Element, or Project Feature relative to the overall actual Eligible Project Costs incurred for the Project, Project Element, or Project Feature. If the State is awarded federal credit/reimbursement by the 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.

The Funding Recipient agrees to seek federal credit or reimbursement in accordance with Paragraph 8(d) of this Funding Agreement.

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

- d) If the Funding Recipient is not the local/non-federal sponsor of a federally authorized project, the Funding Recipient represents and warrants:
- 1) Funding Recipient has submitted to the State a legally binding Agreement to Seek Credit or Reimbursement with an appropriate legal entity to file a request for credit or reimbursement from the federal government. The Agreement to Seek Credit or Reimbursement shall commit the appropriate legal entity to comply with terms similar to those that would be required of the Funding Recipient under this Paragraph 8 of the Funding Agreement. This Agreement to Seek Credit or Reimbursement shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.
 - 2) Funding Recipient will comply with the terms of this Agreement to Seek Credit or Reimbursement.
 - 3) Funding Recipient will not seek funds under this Funding Agreement until an application for credit or reimbursement has been filed in accordance with the Agreement to Seek Credit or Reimbursement.
 - 4) In the event that the counter-party to the Agreement to Seek Credit or Reimbursement fails to comply with the terms of the Agreement to Seek Credit or Reimbursement, Funding Recipient agrees that it shall continue to use best efforts to obtain credit or reimbursement from the federal government.

In its sole discretion, the State may waive or modify the requirements of this paragraph provided such waiver or modification is in writing.

9. **FUNDING RECIPIENT'S RESPONSIBILITY FOR WORK.** Funding Recipient shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and providers of services. Funding Recipient shall give personal supervision to any work required under this Funding Agreement or employ a competent

The Funding Recipient's cost-share is based on the Funding Recipient's reasonable expectations at the time the Funding 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 I. At the time the Funding Agreement is signed and before closeout for the Project, a Project Element, or a Project Feature, Funding Recipient shall provide the information required in Exhibit I 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 I; the Parties shall make the adjustments before closeout of the Project, Project Element, or Project Feature in accordance with the provisions of Exhibit I.

- b) Funding Recipient understands that these State/Local cost sharing percentages are based on the assumption that the State and the Funding Recipient will have to pay the federal share that would otherwise be paid if this Project were authorized and funded by Congress. Funding Recipient understands, however, that the State is required as a condition of using funds from Proposition 1E 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:
- 1) Funding Recipient is required to follow the USACE's current Section 221 Crediting Guidance Document. Also, the State shall not disburse any construction funds under this Funding Agreement until the Funding Recipient has secured a Section 221 Memorandum of Understanding for federal credit with USACE. In its sole discretion, the State may waive or modify this requirement provided such waiver or modification is in writing.
 - 2) Funding Recipient shall promptly provide copies of all correspondence relating to the application to the State and will provide timely advance notice of meetings, if any, between the Funding Recipient and the USACE concerning the federal credit or reimbursement application.
 - 3) 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 OMR&R for the Project in accordance with federal law and shall indemnify the federal government and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the Project.
 - 4) If the USACE decides that amendments to the federal credit or reimbursement application, this Funding Agreement, or new agreements between the Funding Recipient and the State are required for the USACE to provide federal credit or reimbursement, Funding Recipient shall not unreasonably withhold its consent to enter into such agreements.
 - 5) Funding Recipient shall diligently pursue obtaining federal credit or reimbursement from the USACE and failure to do so shall be considered an event of default under this Funding Agreement.

representative, with the authority to act for Funding Recipient. Funding Recipient or its authorized representative shall be present while work is in progress. Funding Recipient shall give attention to fulfillment of the Funding Agreement and completion of the Project, and shall keep work under control. Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to bid disputes and payment disputes with Funding Recipient's contractors and subcontractors. The State will not mediate disputes between Funding Recipient and any other entity concerning responsibility for performance of work.

10. **RELATIONSHIP OF PARTIES.** Funding Recipient is acting in an independent capacity and is solely responsible for design, construction, and (except as otherwise provided by Section 24(b) second paragraph) OMRR&R. Review or approval of plans, specifications, Project Real Estate Plan, bid documents or other construction documents, and construction inspection by the State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict Funding Recipient's responsibility.
11. **PERFORMANCE AND ASSURANCES.** Funding Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications under this Funding Agreement and to apply State funds received only to Eligible Project Costs and to OMRR&R in accordance with applicable provisions of the law.
12. **REQUIREMENTS FOR DISBURSEMENT.** Funding Recipient shall meet all conditions precedent to the disbursement of money under this Funding Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Funding Agreement. State shall have no obligation to disburse money under this Funding Agreement unless and until the disbursement is in accordance with requirements of Proposition 1E 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 Funding Agreement and to sign requests for disbursement of State funds. The resolution must be substantially the same as the draft resolution provided in Exhibit E to this Funding Agreement.
 - b) An application for credit or reimbursement has been filed with the federal government as provided for in Paragraph 8 of this Funding Agreement.
 - c) Funding Recipient provides assurance that OMRR&R Agreement requirements as provided for in Paragraph 24 of this Funding Agreement will be adhered to as outlined.
 - d) Funding Recipient has demonstrated compliance with (i) all applicable requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements. This may not be required for Design Projects.

In addition to the requirement that the Funding Recipient demonstrate completion of all required environmental documents, the Department may not issue the approval letter required for combined design and construction projects under Paragraph 1 of this Funding Agreement until it has completed its environmental work and issued a notice of

decision in connection with the Project, Project Feature, Project Element for which the approval letter has been requested.

- e) Funding Recipient has timely submitted Quarterly Reports as required by Paragraph 22.
 - f) 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.
13. **CONSISTENCY WITH THE DELTA PLAN.** The Project may meet the definition of a Covered Action under Water Code Section 85057.5. If the Funding Recipient determines the Project is a Covered Action, the Project is required to be consistent with the regulatory policies of the Delta Plan. If the Funding Recipient determines the Project is a covered action, Funding Recipient must certify consistency with the Delta Plan by submitting a Certification of Consistency to the Delta Stewardship Council (DSC) and the State at least thirty (30) days prior to implementing the Project. Information regarding Covered Actions and Certification of Consistency may be found on the DSC's website at the following locations:

Covered Actions: http://deltacouncil.ca.gov/covered_actions

Certification of Consistency: http://coveredactions.deltacouncil.ca.gov/certification_process.aspx

14. **PAYMENTS AND CREDITS FOR STATE SHARE OF ELIGIBLE PROJECT COSTS.** Eligible Project Costs will be paid or credited by the State in accordance with the cost sharing provisions in Paragraph 8 and according to one or more of the following methods:
- a) Payments for eligible Real Estate Capital Outlay Costs will be made in accordance with the provisions of Paragraph 21 and Exhibit F.
 - b) No credit will be given for work completed before Proposition 1E was approved by the voters on November 7, 2006, with the exception of existing material and/or real estate acquired before that date. Work after November 7, 2006, will be divided into two categories: non-construction work and construction work. Though prior written approval is strongly advised any time a Funding Recipient 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 recognized. The process for seeking credit shall be as follows:
 - 1) For Real Estate Capital Outlay Costs, the process set forth in Paragraph 21(d);
 - 2) For all other Eligible Project Costs (including Real Estate Support Costs), the Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 15. The Statement of Costs shall be submitted within forty-five (45) days of the effective date of this Funding Agreement.

If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs.

- c) 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 Reports and are adjusted quarterly on the basis of a statement of actual Eligible Project Costs.

Within seven (7) days of the effective date of the Funding Agreement through the end of the calendar quarter and forty-five (45) days prior to each calendar quarter thereafter, Funding Recipient shall submit to State a Quarterly Report for each calendar quarter in accordance with Paragraph 22. State shall receive and consider approval of the proposed work and cost estimate provided in the Quarterly Report. At the request of the Funding Recipient, State shall pay in advance on a quarterly or semi-annual basis for approved Eligible Project Costs (excluding Real Estate Capital Outlay Costs) its cost share of the work covered in the Quarterly Report submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 15. If State determines that advances in a quarter exceed actual costs in that same quarter, such amounts may be applied against advances in succeeding quarters. The State's total amount of all advance payments shall not exceed 90% of the total estimated cost in the State's share of Eligible Project Costs payable under the Funding Agreement.

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 (30) days prior to expiration of this Funding Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of ten percent (10%). This withholding will be held pursuant to the terms in Paragraph 17.

15. STATEMENT OF COSTS. Documentation for Eligible Real Estate Capital Outlay Costs will be completed in accordance with Paragraph 21 and Exhibit F. For all other costs (including Real Estate Support Costs), Funding Recipient shall provide State with Statements of Costs.
 - a) Statements of Costs shall be filed monthly or for such longer periods as the State and Funding Recipient may mutually agree. Funding Recipient shall provide a statement of the incurred Eligible Project Costs for work performed during the period identified in the particular statement. Each Statement of Costs and/or Quarterly Report 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 Reports and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Report budget.
 - b) 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 Report 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 15(g). State will notify Funding Recipient of any

Statement of Costs so rejected, and the reasons therefore.

- e) A Statement of Costs containing a mathematical error will be corrected by State, after an email or written correspondence to Funding Recipient; and will thereafter be treated as if submitted in the corrected amount. State will provide Funding Recipient with notification of the corrected Statement of Costs.
- f) State will notify Funding Recipient in writing, whenever, upon review of a Statement of Costs, State determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this Funding Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Funding Agreement; or (3) are not supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). Funding Recipient may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. Disputes concerning whether costs are Eligible Projects Costs and have been adequately documented will be resolved in accordance with the dispute resolution process set forth in Paragraph 20.
- g) The requirements for closeout of the Project, a Project Element, or a Project Feature are provided in Exhibit H. The Project, a Project Element, or a 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, Paragraph 6.

- h) All Statements of Costs shall be accompanied by a statement signed by the Funding Recipient's Program or Project Manager that the statement is correct to the best of his or her knowledge and belief after an investigation that is reasonable under the circumstances and is submitted under penalty of perjury.
 - i) At the sole discretion of the State, the State may modify the requirements for preparation and submittal of Statements of Costs in order to improve administration of the Urban Flood Risk Reduction Program or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.
16. **DISBURSEMENT.** Consistent with Paragraphs 12 and 14, State will disburse to Funding Recipient the amounts approved, subject to the availability of funds. Funds will be disbursed by State in accordance with the cost sharing provisions in Paragraph 8, the relative payment obligations of Funding Recipient, Paragraph 6, and State, Paragraph 5, up to the Total Project Cost, Paragraph 4. Any and all money disbursed to Funding Recipient under this Funding Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.

17. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs the State shall withhold a maximum of ten percent (10%) of the State share until the Project Element of the Project for which the payment is made is completed or, if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed. The Project, a Project Element, or a Project Feature shall not be considered completed until the requirements of Exhibit H have been met to the satisfaction of the State.

When the Project is ready for financial closeout, 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 Funding Agreement, or that Funding Recipient has failed in any other respect to comply substantially with the provisions of this Funding Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests. 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 make a request for early release of funds withheld pursuant to this provision in accordance with the requirements set forth in Exhibit G of this Funding Agreement.

18. **WITHHOLDING THE BALANCE OF FUNDING AMOUNT.** Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 17 (other than requests for early release of funds made by the Funding Recipient pursuant to Exhibit G), the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient. Refusal of Funding Recipient to repay may, at the option of State, be considered a breach of agreement and may be treated as default under Paragraph 20.
19. **WITHHOLDING THE ENTIRE FUNDING AMOUNT.** If the State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to Paragraph 17, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient and the State shall no longer be required to provide funds under this Funding Agreement.
20. **DEFAULT PROVISIONS AND DISPUTE RESOLUTION.**
- a) Events of Default. Funding Recipient will be in default under this Funding Agreement if any of the following occur:
- 1) Breach of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
 - 2) Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement; or
 - 3) Failure to make any remittance required by this Funding 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 (not less than ten (10) days) prescribed by the State, State may do any or all of the following:
- 1) Declare the funds be immediately repaid, with interest, which shall be equal to the State general obligation bond interest rate in effect at the time of the default;
 - 2) Terminate any obligation to make future payments to Funding Recipient;
 - 3) Terminate the Funding Agreement; and
 - 4) Take any other action that it deems necessary to protect its interests, including but not limited to completing the work and requiring the Funding Recipient to pay the cost of the work, less the State cost share.

c) Dispute Resolution.

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

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

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

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

- a) Project Real Estate Plan. Funding Recipient, after consultation with State, shall determine the lands, easements, and rights-of-way necessary for construction and OMR&R of the Project, including those rights required for the flood control structures, temporary construction areas, mitigation sites, borrow sites, spoil sites, access/haul routes, staging areas, private

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 as described in the UFRR Guidelines and described below, provided that a Project Real Estate Plan is on file and has been approved by the State. The disbursement approaches are: (1) standard disbursement approach, (2) advancement of state cost share before completion of land acquisition requirements, and (3) eminent domain disbursement procedures.
- c) Eminent Domain Disbursement Procedures. If eminent domain proceedings are necessary pursuant to applicable law, including Government Code section 7267.1, prior to receiving any reimbursement the Funding Recipient shall provide to the State:
- 1) A copy of the adopted and executed Resolution of Necessity;
 - 2) A copy of the Complaint in Eminent Domain filed with the appropriate court; and
 - 3) 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.
- d) 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 review and approval. After the State completes its 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 found in the Exhibits Binder.
- e) 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 Funding 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 21 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 payment.
- f) 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.

utility relocations; and providing relocation assistance for qualified occupants of acquired property, as required by State and federal statutes, rules, and regulations. Funding Recipient will submit to State a Project Real Estate Plan. The Guidelines for a plan to establish acceptable Project Real Estate Requirements is set forth in the Exhibits Binder.

Funding Recipient shall provide or acquire all necessary real property services for all parcels in support of the approved Project Real Estate Plan in accordance with the land acquisition process described in this Funding Agreement and is 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; and
- 2) Installation of permanent demarcation of property boundaries on all property rights acquired by the project; and
- 3) Acquisition of 20 feet in fee landside of the levee toe. If there are any acquisition deviations to the land acquisition process as described in this Funding Agreement, program staff will approve or reject such deviation on a parcel-by-parcel basis; and
- 4) Appraisal of all parcels establishing the fair market value; and
- 5) Environmental site assessment reports to determine the existence of hazardous and toxic waste materials, in accordance to American Society for Testing and Materials (ASTM) E1527-13 standards; and
- 6) Preparation of written offers, 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, relocation agreements, and lease agreements; and
- 7) 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"; and
- 8) Preparation of memorandums of settlement, as depicted in the Exhibits Binder, for transactional review and approval including settlement justification, escrow instructions worksheet and closing; and
- 9) 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; and
- 10) Preparation of a Relocation Assistance Plan; and
- 11) Preparation of a land acquisition final accounting package.

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

22. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.

- a) Overall Work Plans: An Overall Work Plan, Budget, and Schedule for the Project are included as Exhibit A to this Funding Agreement.
- b) Quarterly Reports: The Funding Recipient will be required to submit Quarterly Reports to update the State on the status of the Project. The first Quarterly Report will be required within seven (7) days of the effective date of the Funding Agreement and will include only a plan describing work that is to take place in the first subsequent quarter. A Quarterly Report must be submitted each quarter thereafter until construction is complete. Each Quarterly Report must be submitted to the State by forty-five (45) days into the current quarter for the previous and upcoming quarters. These reports are to provide a summary of work performed in the previous quarter, work currently being performed in the current quarter, and a plan for upcoming quarter as described below:
 - Previous Quarter Update
 - The Previous Quarter Update must include a discussion of the work performed and the cost of that work. It should also include a statement of costs identifying each individual invoice for the quarter and a statement of interest earned on State funds each quarter. The statement of interest must be reconciled each quarter and interest earned must be deducted from future funding requests. The Funding Recipient will be required to submit these progress reports to secure continued disbursement of State funds.
 - The Previous Quarter Update must summarize the current earned value of the work completed for the Project. The statement must include an evaluation of the scope, schedule, and budget as compared to the Overall Work Plan to provide evidence that the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project, as well as staying on schedule. If there are any deviations from the Overall Work Plan, a discussion of the deviation must be included.
 - Current Quarter Update
 - The Current Quarter Update will include a description of work being performed in the current quarter. This must include a discussion of the scope of work and projected cost.
 - Subsequent Quarter Plan
 - The Subsequent Quarter Plan will include detailed information for the quarter after the current quarter regarding the work to be performed, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule.
- c) 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 Funding Agreement. Exhibit H, provides further information regarding what the report is to contain.
- d) 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: Purpose and Description of the Project, Actual Work Done, Schedule (Actual vs. Proposed), Final Documents, Reports Generated/Utilized During the Project, As Built/Record Drawings, Photo Documentation, and Civil Engineer Certification of Project. Funding Recipient shall also report any additional costs and/or revenues deriving from the Project. This record keeping and reporting process shall be repeated annually as provided in the OMRR&R Agreement.

- e) Project-Associated Work: The work plans and reports described in paragraphs (a) through (e) above shall include information regarding any Project-Associated Work, which is work on projects that are associated with the work to be done under the Overall Work Plan, but will not be funded under this Funding Agreement. The State will determine the extent of the information required concerning Project Associated Work on a case-by-case basis in consultation with the Funding Recipient.
 - f) Compliance with Executive Order S-02-07: At the sole discretion of the State, the State may modify the requirements for preparation and submittal of work plans and reports called for in this Funding Agreement in order to improve administration of the Urban Flood Risk Reduction Program or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.
 - g) 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. The State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.
23. SAFETY AND EMERGENCY RESPONSE PLANS. Funding Recipient agrees to provide the 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 Water Code section 9650(b). The Funding Recipient agrees to use best efforts to ensure that the safety plan is integrated into any other Funding Recipient emergency plan and is coordinated with the state emergency plan. Failure to meet these requirements may, at the option of the State, be considered a breach of the Funding Agreement and may be treated as default under Paragraph 20. Funding Recipient shall update the plan as provided in the OMRR&R agreement attached hereto as Exhibit D.
24. OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION.
- a) Funding Recipient agrees to provide the State an acceptable detailed interim OMRR&R manual at least 120 days before seeking an early partial release of withheld funds for the Project, Project Element, or Project Feature in accordance with the provisions of Exhibit G. If Funding Recipient does not seek early partial release of withheld funds, the OMRR&R Manual shall be provided at least 120 days before Project Closeout in accordance with the provisions of Exhibit H. The manual shall be consistent with the requirements of 33 C.F.R. section 208.10 and other applicable USACE engineering regulations.

- b) Funding Recipient agrees that it will execute an agreement with the Central Valley Flood Protection Board, or a successor thereto, substantially in the form of Exhibit D to this Funding Agreement, which sets forth the obligations of the Funding Recipient to do the OMRR&R work for the Project. Refusal of Funding Recipient to do the OMRR&R work in accordance with Exhibit D may, at the option of the State, be considered a breach of this Funding Agreement and may be treated as default under Paragraph 20.

If the Funding Recipient is not currently the entity responsible for OMRR&R of the Project, the Funding Recipient also represents and warrants:

- 1) Funding Recipient has submitted a legally binding Agreement to Seek Responsibility for OMRR&R between the Funding Recipient and each appropriate legal entity which is required to enter into an OMRR&R agreement with the Central Valley Flood Protection Board, or any successor thereto, that is substantially in the form of Exhibit D to this Funding Agreement. Each Agreement to Seek Responsibility for OMRR&R shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.
- 2) Funding Recipient will comply with the terms of this Agreement to Seek Responsibility for OMRR&R.
- 3) In the event that the counter-party to the Agreement to Seek Responsibility for OMRR&R fails to comply with the terms of the Agreement to Seek Responsibility for OMRR&R, Funding Recipient agrees that it shall continue to have responsibility for OMRR&R.
- 4) In a location where the State of California Maintenance Areas maintain levees, the responsibility to OMRR&R the levees remains with the Funding Recipient until the Project is accepted by the State in writing.

If the entity responsible for OMRR&R of the Project is a State of California Maintenance Area, an OMRR&R Agreement between the Central Valley Flood Protection Board and the State of California Maintenance Area is not required.

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

- c) Funding Recipient and any other legal entity that has signed an Agreement to Assume Responsibility for OMRR&R 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 OMRR&R work for the Project not later than the point at which 25% of the Project funds have been extended.
- d) If requested to do so by the State, Funding Recipient agrees that it shall provide a written notice to landowners and other affected interests of the extent of protection afforded by the Project not less than once each year. The contents of this written notice will be determined by the State and may include the types of statements codified at Water Code section 9121(b). Funding Recipient further agrees that all costs of providing such information will be borne by the Funding Recipient and that the obligation to provide such information to landowners will extend beyond the term of this Funding Agreement.
- e) The Funding Recipient will be required to provide to the State an acceptable detailed draft addendum to the O&M Manual prior to construction disbursement.

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

Without limiting the foregoing, Funding Recipient shall keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements, including but not limited to, requirements regarding prevailing wages for public works projects (Lab. Code, § 1720, et seq.), limitations on use of volunteer labor (Lab. Code, § 1720.4), and workers' compensation insurance (Lab. Code, § 3700 et seq.) for any work done under this Funding Agreement.

26. PROGRAM AND PROJECT MANAGERS. Either party may change its Program or Project Manager upon written notice to the other party.
- a) State's Program Manager: Shall be the Chief, Division of Flood Management, Department of Water Resources. State's Program Manager shall be State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.
- b) Funding Recipient's Program Manager: Funding Recipient's Program Manager shall be **Deputy Executive Director, SJAFCA**. Funding Recipient's Program Manager shall be the Funding Recipient's representative for the administration of the Funding Agreement and shall have full authority to act on behalf of the Funding Recipient, including authority to execute all payment requests. If authorized to do so, the Funding Recipient's Program Manager may delegate tasks to the Funding Recipient's Project Manager.

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

State of California
Department of Water Resources
Division of Flood Management
Attention: Project Manager
Urban Flood Risk Reduction Projects
3464 El Camino Avenue Room 200
Sacramento, California 95821

Roger Churchwell

San Joaquin Area Flood Control Agency
22 E. Weber Ave., Stockton, California 95202

28. INCORPORATION OF EXHIBITS. This Funding Agreement incorporates:

Exhibit A, Overall Work Plan, Budget, and Schedule
Exhibit B, Standard Conditions
Exhibit C, Quarterly Report Format
Exhibit D, Operation, Maintenance, Repair, Replacement, and Rehabilitation 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 Closeout
Exhibit I, Accounting for Contributions toward Certain Supplemental Benefits

29. MODIFICATION OF OVERALL WORK PLAN.

The Department will consider approving or requiring changes to the Overall Work Plan due to circumstances that were not reasonably foreseeable at the time the Funding Agreement was executed. The Department shall allow non-material changes to be made to the Overall Work Plan without formally amending the Funding Agreement. In particular:

- The Department may approve or require changes to the design plans in the Overall Work Plan if, at the sole discretion of the Department, the Department determines that the changes will improve the Project design. Changes to the design plans will not be considered material unless they result in a material change to the budget or schedule.
- The Department may approve or require changes to the portion of the Overall Work Plan that sets forth the Project schedule. Changes to the schedule will not be considered material unless they extend the term of the Funding Agreement.
- The Department may approve or require changes to the portions of the Overall Work Plan which concern the Project budget. Changes to the budget will not be considered material unless the change would require an amendment to the Funding Agreement under this Paragraph to increase or decrease the State funding commitment.

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

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

31. INDEPENDENT REVIEW. At its sole discretion the Department may order an Independent Review of Funding Recipient's design and construction plan. Any Independent Review shall be conducted in the manner set forth in the Urban Flood Risk Reduction Guidelines. The costs of the Independent Review will be paid by the Funding Recipient, but are Eligible Project Costs and the State will reimburse the Funding Recipient for 100% of the costs associated with conducting

the Independent Review. 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 29 of this Funding Agreement.


32. **FUNDING RECIPIENT COMMITMENTS.** Funding Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for California Disaster Preparedness and Flood Prevention Bond Act of 2006 financing.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement as of the latest date of execution by the Department of Water Resources.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

FUNDING RECIPIENT

By  For
Eric S. Koch
Chief, Division of Flood Management

By  For
James B. Giottonini
Executive Director, San Joaquin Area Flood Control Agency

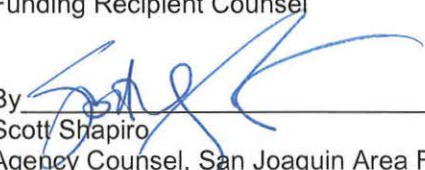
Date: 9/19/17

Date: 8/28/17

Approved as to Legal Form
And Sufficiency:

Approved as to Legal Form
And Sufficiency:
Funding Recipient Counsel

By 
Robin E. Brewer
Assistant Chief Counsel

By 
Scott Shapiro
Agency Counsel, San Joaquin Area Flood Control Agency

Date: 9/18/17

Date: 8/24/17

1.0 Background

Project Description

The Smith Canal Gate Project (Project) includes construction of the following components.

- A fixed dual sheet pile floodwall filled with granular material that would extend from Dad's Point to the Stockton Golf and Country Club on the right bank of the San Joaquin River. The wall will have five 48-inch tidal culverts passing through it, each equipped with flap gates on the San Joaquin River side and slide gates on the Smith Canal side for positive closure.
- A 50-foot-wide miter (double-door) gate structure in the dual sheet pile floodwall. The height of project improvements such as the dual sheet pile floodwall, gate, etc., is 15 feet.
- Approximately 700 linear feet of floodwall, 100 feet of sheet pile stability wall, and grade adjustment with a 20' wide crown along Dad's Point to tie into high ground at Louis Park.
- Recreational features and habitat improvements on Dad's Point, as well as removal of invasive vegetation
- Optional - Culverts under Moreing Road to improve water circulation between Atherton Cove and Smith Canal

The purpose of the Smith Canal gate is to create a barrier to block flooding in the event of either a 100-year stage event and greater or an imminent or existing breach of a Smith Canal Levee. In these cases, the gate would be closed, preventing flow of water from the Delta into Smith Canal. Thus, the addition of the Smith Canal gate provides a second level of resiliency for the Smith Canal levees not typically seen for earthen levees.

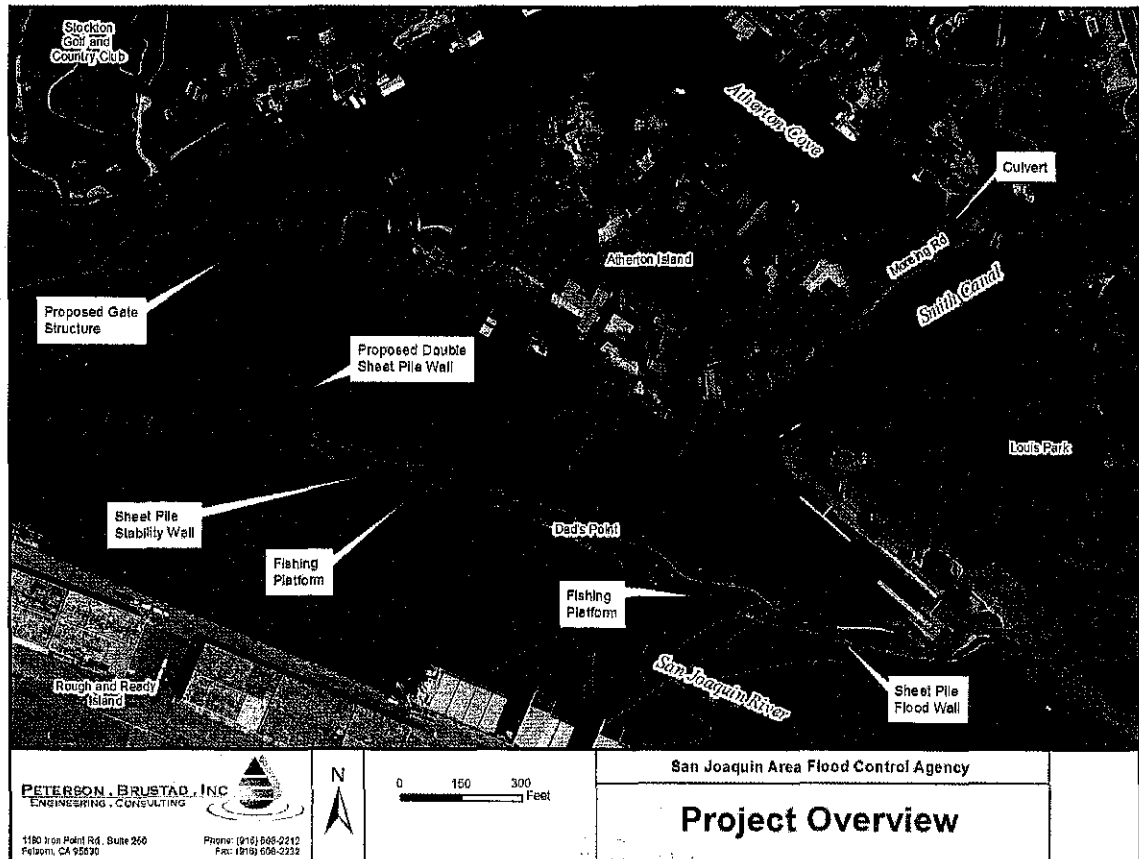
The normal position for the miter gate will be open. Tides will continue to flow in and out of the Smith Canal. The Smith Canal gate will close on the low tide prior to when the Delta stage is forecasted to exceed 8.0 ft.

For imminent or existing levee breaches, the gate will be closed as soon as possible following notification of the breach or potential problem.

The project components have been divided into various elements for this Agreement as follows:

- Element 1: Engineering
- Element 2: Program Management
- Element 3: Construction
- Element 4: Construction Management
- Element 5: Real Estate Acquisition Support
- Element 6: Real Estate Acquisition Costs
- Element 7: Public Outreach
- Element 8: Environmental Mitigation
- Element A1: Associated Project Costs – Recreation Enhancements

Each of these elements are individually described in section 2.0 Overall Work Plan Scope of Work.



1.1 State Plan of Flood Control

To meet the Proposition 1E General Obligation Bond requirements, the Smith Canal Gate Construction Project and/or project elements need to be added to the SPFC. DWR has identified paths for this project to be added to the SPFC and has approved funding for CEQA, NEPA, and design activities to continue prior to inclusion into the SPFC. Elements that are not eligible for funding until it is certain that the project will be included as an element of the recommended plan in the draft Chief's Report are as follows:

- Construction Activities (Element 3 and 4)
- Real Estate Acquisition (Element 6)

Given the time limitations of the Bond funding and the required duration for right of way acquisition, permitting, and construction activities as stated in the Project application package, adequate progress on securing a path to the SPFC will need to be established by December 2018. If at any time Federal Authorization is not reasonably foreseeable, all funding commitments will be withdrawn and the agreement will terminate

2.0 OVERALL WORK PLAN SCOPE OF WORK

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The scope of work has been broken down into Project Elements based on the current implementation strategy. The following sections describe these elements as well as a brief summary of the activities that are included.

Element 1: Engineering

The Engineering element encompasses all activities related to and necessary to complete the engineering and design of the Project, and the associated design support needed during the Project's construction. The budget for this effort reflects the remaining engineering costs of the Project that were not previously completed under Funding Recipient's Design Funding Agreement (DWR Agreement No. 4600009799-AM2) plus the engineering support costs during construction. This element is eligible for funding prior to the facility being added to the SPFC. The following list outlines the activities associated with this element:

- Perform engineering for the design of the dual sheet pile structure. Features include composite action of the fill material and the interlocking steel piling with regularly spaced anchor tie rods exhibiting the behavior of cellular sheet pile structures.
- Perform engineering for the design of a fixed dual sheet pile floodwall filled with granular material that extends from Dad's Point to the Stockton Golf and Country Club on the right bank of the San Joaquin River. The wall will have five 48-inch tidal culverts passing through it, each equipped with flap gates on the San Joaquin River side and slide gates on the Smith Canal side for positive closure.
- Perform engineering for the design of a 50-foot-wide miter (double-door) gate structure to be constructed in the dual sheet pile floodwall. Perform engineering for the design for improvements to Dad's Point. Features include approximately 700 linear feet of sheet pile floodwall, 100 feet of sheet pile stability wall, and grade adjustment with a 20' wide crown along Dad's Point to tie into high ground at Louis Park.
- Perform engineering for design improvements to Moreing Road. Features include culverts under Moreing Road to improve water circulation between Atherton Cove and Smith Canal.
- Perform engineering for design of access improvements to the Stockton Golf and Country Club. Features include a widened path to provide maintenance and inspection access for the fixed dual sheet pile floodwall.
- Prepare 65%, 95% and 100% design reports documenting the design effort and the basis of design for the construction plans and specifications.
- Prepare 65%, 95% and 100% construction plans.
- Prepare 65%, 95% and 100% technical specifications in Construction Specification Institute (CSI) format covering the Project.
- Prepare 65% 95% and 100% estimates of opinion of probable construction costs.
- Provide customized maintenance instructions and operating plan information needed for inclusion in Smith Canal Closure Structure O&M Manual.
- Perform the hydrologic and hydraulic analyses needed to support USACE permitting.
- Perform the surveying needed to support the engineering design.
- Project Management and Coordination
- Civil and Geotechnical Design
- Review of Supporting Design Documents
- Safety Assurance Review
- Topographic Mapping in Support of Civil Design Process
- Hydraulic Modeling
- Right of Entry

- Hazardous Materials Phase 1 & 2 Environmental Site Assessment (ESA) Due Diligence
- Utility relocation design
- Engineering analyses, including seepage, stability, and settlement
- Preparation of all required Geotechnical investigations and analyses required to support an adequate design
- Coordination with independent technical review panels
- Preparation of cost estimates and schedules
- Quality control (QC)

Element 2: Program Management

The Program Management element encompasses all activities related to general program administration, management, and support. This Element is eligible for funding prior to the facility being added to the SPFC. The following list outlines the activities associated with this element:

- Program Management
- Funding Recipient General Program Administration and Management Activities
- Financial Management Support & Administration
- Operation & Maintenance Manual Development
- Funding Agreement Administration & Reporting
- Grant Management Support
- Legal Support
- Funding Recipient staff time
- Bidding support services
- County support services and a proportional and reasonable allocation of general overhead and administrative expenses of Funding Recipient.
- Permitting:
 - Central Valley Flood Protection Board (CVFPB) Encroachment Permit
 - City of Stockton Encroachment Permit
 - California State Lands Lease Application
 - Environmental Permitting including:
 - 408 Package if required
 - 404 Permit
 - Biological Assessment
 - National Historic Preservation Act (NHPA) Section 106 (Cultural Resources)
 - National Environmental Policy Act (NEPA) Documentation
 - 401 Water Quality (WQ) Certification
 - California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration (LSA) Agreement Section 1602
 - Stormwater Pollution Prevention Plan (SWPPP) Preparation
 - Necessary Permit Amendments

Element 3: Construction

The Construction Related Activities element encompasses costs for construction contracts and related support activities. The following list outlines the activities associated with this element.

- Costs associated with materials and construction of the approved plans and specifications including mobilization and demobilization
- Coordinate construction activities with DWR and USACE staff to communicate issues of concern, provide required information, and respond to questions

- Funding Recipient Operation & Maintenance Transfer
- Funding Recipient Execution of OMRR&R Agreements
- Cultural Resource and State Historic Preservation Officer (SHPO) Reporting Activities
- Water Quality Measures

Element 4: Construction Management

The Construction Management Related Activities encompasses costs for support activities related to the construction contract. The following list outlines activities associated with this element:

- Survey Support for Construction Management Activities
- Construction contract administration, including review of work plans, submittals, schedules, budgets, and cash flow projections; evaluation of value engineering proposals; evaluation of change orders; and review of invoices for progress payment
- Design support during construction
- Construction progress meetings
- Construction inspections to ensure that contractors' work is performed in accordance with construction plans and specifications, and is consistent with the intent of the design
- Quality assurance (QA) testing to ensure compliance with the requirements of contract documents, and review of the effectiveness and adequacy of the contractor's QC program
- Review and processing of contractor submittals and requests for information (RFIs)
- Implementing start-up, closeout, and acceptance procedures for the systematic, orderly, and timely completion, acceptance, and transfer of facilities constructed, as well as contract closeout
- Preparing a construction summary report for construction activities that will include a summary of the project history, problems encountered, and resolutions made, summary of major changes, summary of bid and final project costs, QA and QC testing results, photographs depicting construction work, and project record drawings
- Conducting preconstruction biological surveys, training, and construction monitoring for biological resources before and during construction
- Conduct cultural resource surveys, training, and construction monitoring near known cultural resources
- Tribal Monitors if required
- Construction Management Legal Support

Element 5: Real Estate Acquisition Support

This work element encompasses real estate support costs. These costs required to determine existing rights and activities required to support planning, engineering, design and transfer of rights to Sacramento San Joaquin Drainage District (SSJDD). The following list outlines the activities associated with this element:

Costs Required for Planning, Engineering, Design and Transfer

- Right of Way Management
- SJAFCA Real Estate Administration and Management Activities
- Review of Title Reports
- Boundary Survey to Establish Existing Rights of Way and Property Lines
- Real Estate Strip Map Delineating Existing Encumbrances, Property Lines, and Proposed Rights of Way (ROW)
- Develop Geodetics to support design
- Legal Review and Support
- Boundary surveys
- Plat and legal descriptions
- Environmental site assessments

Costs Required for Construction

- Support to Process Approvals within DWR
- Appraisal Reports and Review Appraisal
- Preparation of Administrative Settlement Justifications
- Land Acquisition Activities Legal Support
- Preparation of the Final Accounting Package for DWR
- Real Estate Acquisition Public Outreach Support
- Rights of entry

Element 6: Real Estate Acquisition Costs

The Real Estate Acquisition element encompasses the capital costs associated with acquiring the necessary rights to the property for the construction and implementation of the Project. The payments include payments to property owners, escrow holders or the State Condemnation Deposit Fund, impacted parties needing relocation assistance and lease payments.

Element 7: Public Outreach

The Public Outreach element encompasses all activities related to public outreach to support the Project. This Element is eligible for funding prior to the facility being added to the SPFC. The following list outlines the activities associated with this element:

- Prepare a direct mail piece (newsletter) for the assessment district community
- Coordinate and conduct a community meeting for property owners within the assessment district. Outline progress and respond to questions
- Monitor assessment/project hotline and coordinate responses to inquiries from stakeholders as necessary

Element 8: Environmental Mitigation

The Environmental Support element encompasses all activities related to ensuring the project follows the necessary environmental compliance and it is properly permitted. The following list outlines the activities associated with this element:

- Environmental Analysis and Compliance including:
 - Public Scoping Meeting
 - Environmental Impact Statement (EIS) and Environmental Assessment
 - Cultural Resources Support and Compliance

- Preconstruction Review and Planning (Sensitive Resources)
- Fisheries Support
- Potential CEQA or NEPA Amendments
- Potential Legal Challenge
- Environmental Project Management and Coordination
- Cultural Resource Planning
- Environmental Documentation Public Outreach Support

Element A1: Associated Project Costs – Recreation Enhancements

The Associated Element encompasses the completion of Project work supporting cost share enhancements based on the achievement of associated Project objectives. Specifically, Funding Recipient will plan and install Handicap Fishing Access as part of the Project's implementation thereby providing recreation enhancements supporting the State's multi-benefit project objectives. The following list outlines the activities associated with this element:

- Installation of fishing and wildlife viewing platforms accessible to persons with disabilities
- Construction of a multi-use interpretive trail suitable for walking, running and bicycling with kiosks and benches
- Removal of invasive vegetation and planting of native landscaping
- Installation of bat boxes

3.0 OVERALL WORK PLAN PROJECT BUDGET

The projected cost estimate to complete the scope of work is approximately \$37,552,476 of which the total State cost share is \$22,309,666 million. **Table 3-1** summarizes the budget and assumed State share for the Project.

Table 3-1: Smith Canal Gate Project Overall Work Plan Budget

Element No. / Name	Total Cost	State Cost Share Rate	State Share
1 Engineering	\$1,166,710	63%	\$735,028
2 Program Management	\$718,766	63%	\$452,822
3 Construction	\$31,609,000	63%	\$19,913,670
4 Construction Management	\$1,750,000	63%	\$1,102,500
5 Real Estate Support	\$121,000	63%	\$76,230
6 Real Estate Acquisition Costs	\$208,000	63%	\$131,040
7 Public Outreach	\$50,000	63%	\$31,500
8 Environmental Mitigation	\$1,659,000	63%	\$1,045,170
A1 Associated Project Costs [1] (Recreation Enhancement)	\$270,000	0%	\$0
Credit for Design Phase Work [2]	\$0		\$2,481,068
Additional Local Share (Funding Agreement Limit) [3]			-\$3,659,362
Total Project Costs	\$37,552,476		\$22,309,666

[1] Project associated costs in support of the Recreation Objective for cost sharing enhancement are not eligible for State cost sharing.

[2] Represents an estimate of the additional cost sharing provided as credit toward the local share of eligible costs based on the additional cost sharing (from 50% to 63%) for costs incurred as part of Funding Recipient Design Funding Agreement (DWR Contract No. 4600009799-AM2). The actual amount of credit provided will be subject to the Final Approved Statement of Costs for the referenced agreement. However, the total State cost share will be limited to \$22,309,666 based on DWR's funding commitment limit unless amended in the future.

[3] Represents additional local share needed to fund balance of Total Project Costs due to funding agreement limit based on UFRR Funding Agreement commitment letter dated May 15, 2015.

4.0 OVERALL WORK PLAN SCHEDULE

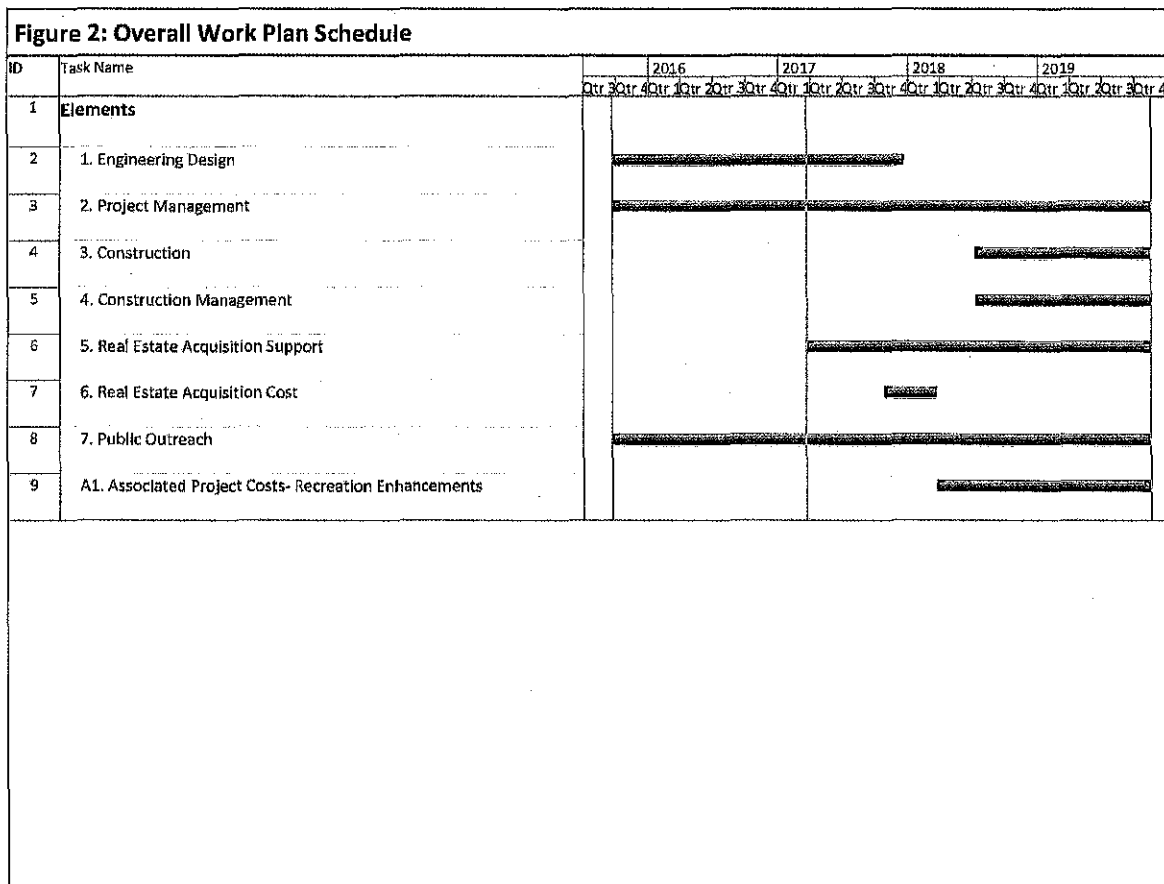


EXHIBIT B STANDARD CONDITIONS

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

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

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

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

B-5 AUDITS: The State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and up to three (3) years after the final disbursement of funds pursuant to this Funding Agreement, with the costs of such audit borne by the State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Paragraph 20 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to examination and audit by the State for a period of three years after the final disbursement under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient, its contractors, consultants, and subcontractors shall be preserved for this purpose for at least three (3) years after the final disbursement of funds pursuant to this Funding Agreement.

B-6 ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a) **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited in a non-interest bearing account, administered, and accounted for pursuant to the provisions of applicable law.
- c) **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) days of the expiration of the Funding Agreement, 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 Funding Agreement.

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

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

B-10 INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests, as provided in paragraph 20.

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

B-12 TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Travel and per diem shall be reimbursed consistent with the rates current at the time of travel. These rates are published at: <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx> or its successor website. For the purpose of computing such expenses, Funding Recipient's designated headquarters shall be: **22 E. Weber Ave. Stockton, California 95202**. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

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

B-14 STATE TO BE HELD HARMLESS: Funding Recipient shall indemnify and hold harmless the State, its officers, agents, and employees free and harmless from any and all liability from any claims and damages

arising from the planning, design, construction, repair, replacement or rehabilitation, maintenance, and operation of 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 Funding Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Funding Agreement, or of any duty, covenant, obligation or undertaking established herein.

B-16 OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

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

B-18 REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

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

B-20 WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

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

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

B-23 CONFLICT OF INTEREST

a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

c) Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. 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-24 AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State that it is in compliance 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 Funding Agreement, Funding Recipient and its contractors, consultants, and 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, sexual orientation, 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 its contractors, consultants, 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 its contractors, consultants, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11100 et seq.) both of which are incorporated into this Agreement by reference. Funding Recipient and its contractors, consultants, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

B-26 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors, consultants, and subcontractors hereby certify, under penalty of perjury under the laws of the State, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. 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 section 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Funding Agreement:

1. Will receive a copy of Funding Recipient's drug-free policy statement, and

2. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

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

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

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

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

B-28 BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for the Urban Flood Risk Reduction Program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to disburse funds under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other funding recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, Executive Order, or Order from the Department of Finance for purposes of this program, State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.

B-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 Funding 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 Urban Flood Risk Reduction Program and throughout the term of this Funding 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 Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Funding Agreement, subject to appropriate

acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

B-32 DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than thirty (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 sixty (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 Funding Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code section 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 Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

B-35 DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this Funding Agreement, under penalty of perjury under the laws of the State, 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 Funding Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

B-37 AIR OR WATER POLLUTION VIOLATION: 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 Water Code section 13301 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 REPORT FORMAT

If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work the quarterly report described in this Exhibit should include information regarding the scope of the Project-Associated Work. The Funding Recipient will clearly distinguish between work included in the Overall Work Plan, which will be funded by the State under this Funding Agreement, and Project-Associated Work, which will not be funded by the State under this Funding Agreement. This Exhibit details the requirements for Quarterly Reports.

The Funding Recipient will be required to submit Quarterly Reports to update the State on the status of the Project. The first Quarterly Report will be required within seven (7) days of the effective date of the Funding Agreement and will include only a Subsequent Quarter Plan. A Quarterly Report shall be submitted each quarter thereafter until construction is complete. Each Quarterly Report must be submitted to the State by forty-five (45) days into the current quarter for the previous and coming quarter. These reports are to provide a summary of work performed in the previous quarter, work currently being performed, and the plan for the immediately upcoming quarter as described below:

- Previous Quarter Update
 - The Previous Quarter Update must include a discussion of the work performed and the cost of that work. It should also include a statement of costs identifying each individual invoice for the quarter and a statement of interest earned on State funds each quarter. The statement of interest must be reconciled each quarter and interest earned must be deducted from future funding requests. The Funding Recipient will be required to submit these progress reports to secure continued disbursement of State funds.
 - The Previous Quarter Update must summarize the current earned value of the work completed for the Project. The statement must include an evaluation of the scope, schedule, and budget as compared to the Overall Work Plan to provide evidence that the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project, as well as staying on schedule. If there are any deviations from the Overall Work Plan, a discussion of the deviation must be included.
- Current Quarter Update
 - The Current Quarter Update will include a description of work being performed in the current quarter. This must include a discussion of the scope of work and projected cost.
- Subsequent Quarter Plan
 - The Subsequent Quarter Plan will include detailed information for the quarter after the current quarter regarding the work to be performed, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule.

For the Project, the report should include the following items at a minimum:

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 met or planned during the reporting period (i.e. tasks completed/planned, milestones met/to be met, meetings held or attended/scheduled, 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 Report;
- A list of any changes approved to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan;
- 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 Funding Agreement; and
- Identify the gross payments received from leasing property acquired as a result of the projects funded by this Funding Agreement and identify the State share of such amount.

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

Exhibit D

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

[Note: The State may modify this *pro forma* OMRR&R Agreement if the Funding Recipient is not the same agency as: (1) the agency which will be responsible for construction of the Project; or (2) the agency which will be responsible for OMRR&R.]

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

1. The [insert name] Urban Flood Risk Reduction Project ("Project") is a modification of a part of the State-Federal Flood Control System known as [insert name] which was authorized by Congress on [insert date]. *[If the project is a modification of the Sacramento River Flood Control Project, use this language: "The [insert name] Project ("Project") is a modification of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.]*
2. State funding had become available for the Project:
 - The voters of California approved the California Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) on November 7, 2006, making available proceeds from the sale of general obligation bonds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for its Urban Flood Risk Reduction Program.
 - The Funding Recipient applied for funding and has signed a Funding Agreement. This Funding agreement is between the State of California Department of Water Resources and the [insert name of Funding Recipient] for [insert project name] ("Funding Agreement").
 - The Funding Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.
 - The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement under which the Board will oversee OMRR&R for the Project for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Project at this time, but in anticipation that federal funds may become available eventually:

- The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.
 - The parties agree that this OMRR&R 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 Project.
4. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the Project under Water Code section 12642 which states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this OMRR&R Agreement that Funding Recipient will be responsible for OMRR&R of the Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages arising from construction or OMRR&R of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED:

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

"Basin:" A separable hydraulic area protected by a system of flood-management infrastructure.

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

"Department:" The State of California Department of Water Resources.

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

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

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

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

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

"Overall Work Plan:" The plan described in the Funding Agreement in Paragraph 22, as amended, and Funding Agreement Exhibit A, as amended.

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

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

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

“Project Site:” The location of the Project.

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

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

SECTION I: Obligations of the Funding Recipient

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

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

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

1. The Funding Recipient hereby accepts responsibility for the completed Project or functional portion thereof. The Funding Recipient will develop an Interim Standard Operation and Maintenance Manual for the Project as required by the Funding Agreement. The Funding Recipient agrees that it will be responsible for OMRR&R of the completed Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Project. The Funding Recipient acknowledges that changes to the Interim Standard Operation

and Maintenance Manual may be made by the State and the USACE before the document becomes final and that the Funding Recipient shall be responsible for OMRR&R in accordance with any revised version of the Operation and Maintenance Manual for the Project or any Supplement to the Operation and Maintenance Manual.

2. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient and Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient and Local Maintaining Agency to enter the land to fulfill its obligations under this OMRR&R Agreement.
3. If the Funding Recipient has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code section 12878 et seq.

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

C. Additional Obligations:

1. The Funding Recipient shall annually update the Interim Operation and Maintenance Manual for the Project prepared pursuant to the Funding Agreement.
2. The Funding Recipient shall annually update the safety plan for the Project prepared pursuant to the Funding Agreement. The Funding Recipient agrees to use best efforts to ensure that the updated safety plan is integrated into any other Funding Recipient emergency plan and is coordinated with the state emergency plan.
3. The Funding Recipient shall provide reports to the Board as follows: (1) The Funding Recipient shall provide copies to the Board of the Project Completion Report and Project Construction Performance Reports prepared pursuant to the Funding Agreement; and (2) If requested to do so by the Board, the Funding Recipient shall provide copies to the

Board of the operation and maintenance reports required pursuant to Water Code section 9140(a) that pertain to the Project. The Board may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities under this OMRR&R Agreement.

SECTION II: Hazardous Substances

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

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain hazardous substances regulated under 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 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 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 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 state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under 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 state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under state and federal Hazardous Substances Laws.

- F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under 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 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 state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

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

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

SECTION IV: Procedures for Reimbursing the State

If the Funding Recipient fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the flood project to perform in a manner necessary to provide its designed level of flood protection, then the State, after notifying the Funding Recipient and providing a sixty (60) day opportunity to cure period, 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, or is unable 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 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 Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

SECTION VI: Obligation of Future Appropriations

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

SECTION VII: Term of Agreement; Amendment

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

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

SECTION VIII: Notices

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

If to the [Funding Recipient]:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

If to the Board:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Exhibit D-1 to this OMRR&R Agreement.

SECTION X: Authority

The Funding Recipient has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Exhibit D-2 to this OMRR&R Agreement.

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

The Central Valley Flood Protection Board

[Funding Recipient]

By _____
(Name)
(Title)

By _____
(Name)
(Title)

Date: _____

Date: _____

Approved as to Legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

(Name)
(Title)

(Name)
(Title)

Exhibit D-1

STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. **NONDISCRIMINATION CLAUSE:** During the performance of this OMRR&R Agreement, Funding Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Funding Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

19. **DRUG-FREE WORKPLACE CERTIFICATION**

Certification of Compliance: By signing this OMRR&R Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

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

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

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

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

11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. WAIVER OF RIGHTS: None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default under paragraph 20 of the Funding Agreement.
14. INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. CONFLICT OF INTEREST
 - a) Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c) Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
 - 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 Labor Code section 3700 *et seq.*, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101

- a) Funding Recipient, its contractors, or subcontractors have made a false certification, or
 - b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.
20. **UNION ORGANIZING:** Funding Recipient, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Funding Recipient, by signing this OMRR&R Agreement, hereby certifies that:
- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
 - b) Funding Recipient shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
 - c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d) If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
21. **COMPUTER SOFTWARE:** Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide, during work on the Urban Flood Risk Reduction Program and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State. **RIGHTS IN DATA:** Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this OMRR&R Agreement shall be in the public domain. Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
23. **CHILD SUPPORT COMPLIANCE ACT:** For any OMRR&R Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:
- a) The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **PRIORITY HIRING CONSIDERATIONS:** If this OMRR&R Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions

funded by the OMRR&R Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code § 10353.

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

Exhibit D-2: Draft Resolution

Resolution No. _____

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

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

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

_____ (Agency, city, county, or other)

by the California Department of Water Resources for an Urban Flood Risk Reduction Program project titled: _____
(Project title)

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

_____ (Agency, city, county, or other)

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

_____ (Project title)

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

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

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

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

of the _____
(Name of Funding Recipient)

on _____
(Date)



Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Exhibit E
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 an Urban Flood Risk Reduction Program project titled: _____ are hereby accepted.
(Project title)

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

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

sign a Funding 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, and as depicted in the Exhibits Binder. 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 compliant with the Geodetic Guidelines and the sample in the Exhibits Binder. 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 in compliance with the Geodetic Guidelines and the sample depicted in the Exhibits Binder. 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, policies, and procedures stated in the Funding 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.
- Easements or rights of way over said land that are agreed to by the State, if any, by prior written approval.

State shall provide Funding Recipient an Exhibits Binder, which depicts Geodetic Branch Procedures, guidelines, standards, and requirements for Land Acquisition Boundary Surveys, Legal Descriptions and Mapping.

State shall verify Funding Recipient's adherence and compliance 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 an Exhibits Binder, which depicts the Appraisal Standards and Specifications and Department of General Services Appraisal Review Specifications.

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

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

Funding Recipient shall comply with State's, Water Resources Engineering Memorandum No. 59 (WREM 59), which establishes a policy for pre-acquisition inspection of real property and improvements where the State is anticipating to be conveyed, by assignment, a real property interest, fee or easements, for ascertaining the existence of hazardous substances. At a minimum, 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), for all fee purchases, permanent easements, and all levee right of way requirements, including OMRR&R. 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, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 et seq.), Hazardous Substances Account Act (Health & Saf. Code, § 25300 et seq.), or other applicable law and sustain all costs accordingly.

Any required remediation plan shall be approved by the State before the State advances any funds into escrow under paragraph 21 (b) of this Agreement. The Funding Recipient shall be considered the Project proponent, bona fide prospective purchaser, operator, and/or landowner for purposes of CERCLA, RCRA, Hazardous Substances Account Act, other applicable law and WREM 59 liability.

Funding Recipient shall convey the real property rights free and clear of all known 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 hazardous substances.

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 an Exhibits Binder, which depicts the Environmental Site Assessment Standards and Guidelines.

State shall verify Funding Recipient's adherence and compliance 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 or as provided by the Funding Recipient and with prior written approval by the State, 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 (including maps and deeds) shall be reviewed by State for compliance and adherence to the Urban Flood Risk Reduction Projects, Geodetic Branch Procedures, Guidelines, Standards, and Requirements Land Acquisition Boundary Surveys, Legal Descriptions and Mapping, as depicted in the Exhibits Binder.

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 ASTM E1527-05 standard practice and the requirements set forth in 40 C.F.R. part 312. This standard is in accordance with 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 and/or reimbursement 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, and as depicted in the Exhibits Binder.

- 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: the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (42 U.S.C. § 4601 et seq.) and the implementing federal regulations (49 C.F.R. part 24); California Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, § 6000 et seq.); and, the State's *Relocation Assistance Policy*.

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 sufficiently justified through the appraisal process, it may be authorized by State's Real Estate Branch. Negotiated settlements of a substantial amount, or those that cannot be sufficiently 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. The Administrative Settlement Justification Process is depicted in the Exhibits Binder, and must be strictly adhered to for any consideration.

Funding Recipient is at risk of not receiving cost-sharing for negotiated settlements 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, and as depicted in the Exhibits Binder.

- 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 and justification 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.

All 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 Funding Agreement including funding, clearing title at close of escrow, and issuance of a policy of title insurance.

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

Funding Recipient will select an escrow holder of its choice to facilitate escrow. If the State is providing funding for the acquisition at the time of the transaction, then Escrow holder shall be instructed by State as to funding, clearing title at close of escrow, and issuance of a policy of title insurance. This is not applicable if the Funding Recipient is requesting reimbursement after closing of escrow.

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 Funding Agreement and hence subject to State cost sharing requirements.

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

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

Funding Recipient shall submit for State's approval a land acquisition final accounting package, 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 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 withheld funds.

The State will consider requests for early partial release of funds that are being withheld pursuant to Section 17 including the release of Real Estate Support Costs as well as Real Estate Capital Outlay Costs and Relocation Assistance Costs being withheld under Sections 21 (b) and 21 (c).

A. 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 the 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 for a partial release of withheld funds for a Project Feature, Project Element, or Project if the Funding Recipient: (1) has provided an OMRR&R Manual and Project Construction Completion Report in accordance with Exhibit H, Sections II.A and II.B ; and (2) has made significant progress toward providing the required land acquisition final accounting packages required for completion of the land acquisition closeout process specified in Exhibit H, Section II.C.
3. **Amount Withheld:** The State will only consider a request if at the time the request is made the State is withholding adequate funds to ensure that the approved scope of work is completed, all agreement requirements have been met, and the funding recipient is performing as requested by the State. If this amount exceeds the total projected remaining costs to complete the approved scope of work, the State will consider requests to reduce such withholding.

Notwithstanding the conditions described above, in cases where the State is withholding significant dollars on a project, the State may, at its sole discretion, consider reducing the withholding to 5% or less based on the State's evaluation of performance and remaining risk, and when significant closeout requirements have been met. Items to consider when establishing the available balance to be released to the Funding Recipient would be pending real estate payments, expected environmental establishment and monitoring costs, excess real estate, excess contract dollars, interest, or lease proceeds due to the State.

B. 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 more than an updated estimate of 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 Funding Agreement.

C. 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 B above;
2. Provides evidence that the Funding Recipient has met the standards for early partial release of funds set forth in Section B above;
3. Provides updated estimates of total remaining Project Costs and the State's share of remaining 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.

D. 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 (90) 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

Below is an outline of the Project closeout documents required, and their timelines, in order to closeout the Project or Project Elements or Features.

- A. Interim OMRR&R Manual (120 days prior to completion of the first Project Element)*
- B. Project Completion Report
 - 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) Funding Agreement and Amendments
 - (iv) Final technical report (quality assurance/quality control [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 compact disc (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. Construction Completion Report - (within 90 calendar days of completion of all construction tasks)*
 - (i) Submit Construction Completion Report for review and approval.
- 2. Preliminary Statement of Costs and Payments Received from DWR
 - a. Complete account of invoices/costs provided by the Funding Recipient to DWR. The list of all project invoices, including information such as:
 - (i) Date each cost was incurred;
 - (ii) The amount of the cost;
 - (iii) Labor cost of personnel of agency/major consultant/sub-consultants;
 - (iv) Personnel, hours, rates, type of profession and reason for consultant, i.e. design, CEQA work, etc.
 - (v) Construction cost information, shown by material, equipment, labor costs, and change orders;
 - (vi) Breakdown of costs into Project management, design, environmental, construction, construction management, real estate, lease payments, relocation assistance, based upon breakdown of Overall Work Plan, etc.
 - b. Summary of all project costs incurred in section (a) including:
 - (i) All internal and external costs not previously disclosed;
 - (ii) Accounting of the cost of Project expenditures in relation to the Overall Work Plan Budget; and
 - (iii) A discussion of factors that positively or negatively affected the Project cost and any deviation from the original Overall Work Plan Budget.
 - c. Complete accounting of payments provided by DWR to the Funding Recipient. The list of funding received from DWR will include information such as:
 - (i) A statement verifying separate accounting of funding disbursements.
 - (ii) The date each payment was received by the Funding Recipient;
 - (iii) The amount of the payment; and,

- (iv) The purpose of the payment (i.e. True-up, Advance, Retention Release, Right of Way payment, etc.).
 - 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. A summary of the total interest earned from State advances and a statement of how much is creditable to any remaining State share due or the amount that is due back to the State.
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. OMRR&R Agreement (fully executed)
 5. Project-Associated Work Report (if required because some segments are constructed with the Project but not funded by the Urban Flood Risk Reduction Program)
- C. Real Estate Project Closeout Documents
1. Land Acquisition Final Accounting Package reviewed and approved
 2. Final conveyance documents accepted and recorded
- D. Final Statement of Costs (submitted within sixty (60) days of when real estate project closeout 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 I.

III. POST CONSTRUCTION PERFORMANCE REPORT

In anticipation of the report required per the OMRR&R Agreement and by CA Assembly Bill 156, Sec. 9140 and 9650 each September 30 and ninety (90) days after completion of the submittal of Project Completion Report:

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

* Time extension may be requested and will be considered on an individual basis.

Exhibit I

ACCOUNTING FOR CONTRIBUTIONS TOWARD CERTAIN SUPPLEMENTAL BENEFITS

[To be completed for Projects which claim an increased State cost-share for ecosystem enhancements and restoration, and other multi-benefit features]

At the time of execution of this Funding Agreement the State's cost-share reflects an increase for contributions toward certain features. The Funding Recipient has provided a detail cost share calculation ("Cost Share Analysis"). This Cost Share Analysis 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: (a) attain the desired Level of Protection; (b) provide mitigation required by permits or by CEQA or NEPA; or (c) attain increased cost share by identifying objectives such as: 1) disadvantaged area community, 2) system improvement, 3) ecosystem enhancement and restoration, 4) other multi-benefit features, and 5) setback levees.
- 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. ***[Requirements shall be determined by the State on a case-by-case basis before the Funding Agreement is signed.]***

The increase in State cost share for the Disadvantaged Area Community, State Facilities, and System Improvement will be established at execution of the agreement and will not change. The increase in State cost share for all other features will be estimated at the time the agreement is executed. However, the final State cost share will not be established until project completion/closeout or any final audit thereafter. The applicants must avoid documenting duplicative benefits. Here are a couple of examples:

- The final State cost share towards ecosystem enhancements and restorations will be based on the final contribution to each objective made by the applicant. This cannot be duplicative of open space, recreation or increased ground water recharge.
- The State may pay for additional costs associated with setback levee, but will not pay for additional benefits that may result from the levee setback, such as recreation, open space, or increased groundwater recharge. 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.

The Funding Recipient is required to report in their quarterly report of their activities on the objectives that impact the final cost share to establish progress to attain the desired level of cost share increase. If a Funding Recipient fails to provide the features 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 18 and 19 of this Agreement, and take other appropriate actions.

An increase in the State's cost-share shall be subject to the requirements of Paragraph 29 of the Funding Agreement.

Exhibit E
DRAFT RESOLUTION ACCEPTING FUNDS

Resolution No. 17 11

Resolved by the San Joaquin Area Flood Control Agency
(Governing body, city council, or other)

of the San Joaquin Area Flood Control Agency
(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

San Joaquin Area Flood Control Agency by the California Department of
(Agency, city, county, or other)

Water Resources for an Urban Flood Risk Reduction Program project titled: Smith Canal Gate are hereby accepted.

(Project title)

The Chairperson of the
San Joaquin Area Flood Control Agency
(Presiding officer, president, city manager, or other official)

San Joaquin Area Flood Control Agency, or designee is hereby authorized and directed to
(Agency, city, county, or other)

sign a Funding 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 May 18, 2017
(Board of Directors, Supervisors, etc.)

of the San Joaquin Area Flood Control Agency
(Name of Funding Recipient)

on May 18, 2017
(Date)



Authorized Signature _____

Printed Name Katherine M. Miller

Title Chair

Clerk/Secretary James B. Giottonini

SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

=====

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE URBAN FLOOD RISK REDUCTION AGREEMENT WITH THE DEPARTMENT OF WATER RESOURCES TO FUND CONTINUING DESIGN AND PERMITTING AND FUTURE CONSTRUCTION OF THE SMITH CANAL GATE PROJECT

In mid-2014, the Department of Water Resources (DWR) released draft Urban Flood Risk Reduction (UFRR) grant guidelines. The grant has \$155 million available and favors multi-benefit projects. In March 2015, as required by DWR, the Agency submitted an UFRR grant Concept Proposal and on May 8, 2015, DWR informed the Agency that a grant had been conditionally approved.

On August 28, 2015, the Agency submitted a full application for an UFRR grant requesting State funding in the amount of \$22,309,666 and DWR accepted the application and presented an UFRR agreement for execution by the Agency.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

1. The UFRR Agreement represents a promise from the State of California to fund its share of the Smith Canal Gate Project (Project), in exchange for the Agency agreeing to construct the Project. There are many positive aspects to the UFRR Agreement:

a. The original estimate was that the State would cost share in 50% of the Project, the UFRR Agreement provides that the State will cost share in 63% of the Project due to Agency's staff's determination that a higher cost share was appropriate.

b. In addition to cost-sharing, the State agrees to advance some of the money to alleviate cash flow issues for the Agency.

c. The State has largely agreed to the work plan developed by the Agency, which includes budget, scope, schedule, and method.

2. The State's continued funding of the Project is tied to the Lower San Joaquin River Feasibility Study. The UFRR Agreement provides in relevant part:

a. To meet the Proposition 1E General Obligation Bond requirements, the Project and/or project elements need to be added to the State Plan of Flood Control (SPFC). DWR has identified paths for this project to be added to the SPFC and has approved funding for CEQA, NEPA, and design activities to continue prior

to inclusion into the SPFC. Elements that are not eligible for funding in advance of inclusion of the project in a Chief's Report and subsequent authorization by Congress are (i) Construction Activities (Element 3 and 4); and (ii) Real Estate Acquisition (Element 5 and 6).

b. Given the time limitations of the Bond funding and required duration for right of way acquisition, permitting, and construction activities as stated in the Project application package, adequate progress on securing a path to the SPFC will need to be established by December 2018. If at any time Federal Authorization is not reasonably foreseeable, all funding commitments will be withdrawn and the agreement will terminate. Adequate Progress is defined as 1) Inclusion of the project in a final Chief's Report signed by USACE's Chief of Engineers, and 2) Congressional authorization of the Project via a Water Resources Development Act (WRDA) bill, or similar bill, by December 31, 2018.

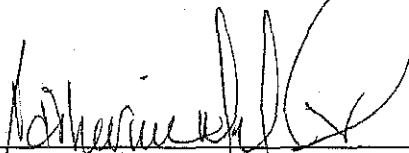
c. The UFRR Agreement allows DWR to waive this requirement if it deems it is appropriate due to changed circumstances, such as Congressional delay:

B-20 WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

3. The Board authorizes the Executive Director to execute the Urban Flood Risk Reduction agreement with the Department of Water Resources to fund continuing design and permitting and future construction of the Smith Canal Gate Project.

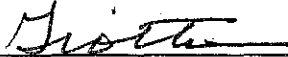
4. The Board authorizes the Executive Director to make necessary changes to the agreement, working with General Counsel, so long as such changes are not considered major.

PASSED, APPROVED AND ADOPTED this 18nd day of May, 2017.


KATHERINE M. MILLER, Chair
of the San Joaquin Area
Flood Control Agency

ATTEST:

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JAMES B. GIOTTONINI, Secretary
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:



SCOTT L. SHAPIRO, Legal Counsel
for the San Joaquin Area
Flood Control Agency