Title: Department of Water Resources: Flood Maintenance Assistance Agreement (FMAP)

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager, or City Manager’s designee to: 1) execute the Funding Agreement No. 2019-FMAP-NA5-01 with the State of California, Department of Water Resources (DWR) for the Flood Maintenance Assistance Program; and 2) execute all documents related to the agreement; and 3) amend the revenue and expenditure budgets in the SAFCA Levee Maintenance MYOP (I14120300) reimbursable fund (Fund 6211).

Contact: Bill Busath, Director, (916) 808-1434; Chuong (Ryan) Pham, Business Services Manager (916) 808-8995; Connie Perkins, Senior Engineer, (916) 808-1914; Dean Fujimoto, Capital Finance and Grant Manager, (916) 808-6645, Department of Utilities

Presenter: None

Attachments:
1-Description/Analysis
2- Resolution
3-FMAP Agreement
4-Attorney Certification
5-OMRR&R Agreement
Description/Analysis

**Issue Detail:** The City’s Department of Utilities (DOU) is seeking approval for the funding agreement between the City and the DWR.

The City of Sacramento must complete a System Wide Infrastructure Framework (SWIF) plan to address unacceptable items from the U.S. Army Corps of Engineer (USACE)’s levee inspection report. A draft SWIF was submitted to USACE and the City of Sacramento is waiting for comments. The funding will be used to finalize the SWIF.

The other portion of the funding will be used to purchase excavator with a trailer. Currently, the DOU rents this type of excavator for multiple applications. The excavator would primarily be used by the Levee Maintenance Section on a daily basis replacing the JD backhoe that is not adequate and safe for staff to accomplish the goals and needs that are presenting themselves maintaining the levee infrastructure.

**Policy Considerations:** Additionally, Council Resolution 2018-0235 requires City Council approval to enter into a grant agreement and appropriate funding when the agreement exceeds $100,000.

**Economic Impacts:** None

**Environmental Considerations:** The Community Development Department, Environmental Services Manager has determined that the proposed activity is not a project pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15378(b). The fiscal management of the DOU’s Capital Improvement Project is an ongoing administrative fiscal activity and is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

**Sustainability:** The project is consistent with the City's Sustainability Master Plan goal by enabling DOU to continue to provide flood control. The proposed project conforms to the Sacramento County LHMP goals. These projects minimize vulnerability to the impact of natural hazards, improve public awareness, improve the capabilities of the community, and assure conformance to Federal and State Hazard Mitigation Initiatives.

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** The City is susceptible to various types of flood events: riverine, flash, and localized stormwater flooding; and levee and dam failure flooding. Flooding is the most significant natural hazard that the City faces. This funding will help the City comply with U.S. Army Corps of Engineer levee maintenance requirements.
Financial Considerations: Approval of the funding agreement with DWR will allow the City to receive the amount not-to-exceed $420,000 of grant funds. The City will amend the revenue and expenditure budgets in the SAFCA Levee Maintenance MYOP (I14120300) reimbursable fund (Fund 6211) in the amount not-to-exceed $420,000. There are no match requirements for the Flood Maintenance Assistance Program.

There are no General Funds allocated or planned for this project.

Local Business Enterprise (LBE): Not Applicable

Background: The FMAP is a new program providing state funds for eligible maintenance activities to Local Maintaining Agencies (LMAs) to help obtain acceptable maintenance of the State Plan of Flood Control facilities (levees, channel, and structures). As a LMA, DOU, Drainage Section, Levee Maintenance Section is responsible for the maintenance and inspection of 3.66 miles of levee on the Sacramento River and 19 miles of levees in the South Sacramento Streams Group (Morrison Creek).
RESOLUTION NO. 2019-  
Adopted by the Sacramento City Council  
April 23, 2019  

Fiscal Year 2019 Funding Agreement between the State of California Department of Water Resources and the City of Sacramento for the Operations and Maintenance Activities, Operation, Maintenance, Repair, Replacement and Rehabilitation Agreement (OMRR&R) Part of the Flood Maintenance Assistance Program under Budget Act of 2018 (Stats. 2018, ch. 29 Item 3860-001-0001)  

PROGRAM BACKGROUND  

A. The current 2017 Central Valley Flood Protection Plan update recognized that the operation and maintenance of the State Plan of Flood Control facilities has been chronically underfunded. In response to this need, the Budget Act of 2018 (Stas. 2018, ch. 29, Item 3860-001-0001-), appropriated funding to the Department of Water Resources (DWR) for Operations, Maintenance, Repair, Rehabilitation, and Replacement costs. It is DWR’s intent to work in collaboration with the Central Valley Flood Protection Board to allocate a portion of the funds to Local Maintaining Agencies (LMAs).  

B. In December 2018, DWR released a new program, the Flood Maintenance Assistance Grant Program (FMAP) providing state funds for eligible maintenance activities to LMAs, for the purpose of obtaining acceptable maintenance of the State Plan of Flood Control Facilities (levees, channels and structures). DWR has prepared Funding Agreement No. 2019-FMAP-NA5-01 between the City of Sacramento, Department of Utilities and the Department of Water Resources. The City will receive $420,000 pursuant to the agreement.  

C. The City of Sacramento has identified that the completion of the System Wide Improvement Framework plan and the purchase of an excavator is eligible for funding under the Flood Maintenance Assistance Program and City staff is recommending approval of the Funding Agreement.  

D. Approval of the Funding Agreement with DWR will provide funding to address flooding issues and allow the City to receive $420,000 in grant funding. The City will amend the revenue and expenditure budgets in the SAFCA Levee Maintenance MYOP (14120300) reimbursable fund (Fund 6211) in the amount of $420,000. There are no match requirements.  

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:  

Section 1. The City Manager or the City Manager’s designee is authorized to sign the Funding Agreement between the City and Department of Water Resources to receive funding for Flood Maintenance Assistance Grant Program and all related documents;
Section 2. The City Attorney or the City Attorney’s designee is authorized to Sign the Attorney Certification, Appendix 2;

Section 3. The City Manager or the City Manager’s designee is authorized to sign the Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R), Appendix 3;

Section 4. The City Manager or the City Manager’s designee is authorized to amend the revenue and expenditure budgets in the SAFCA Levee Maintenance MYOP (I14120300) reimbursable fund (Fund 6211) as appropriate for the awarded funds in the amount not-to-exceed $420,000.
STATE OF CALIFORNIA
NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

Agreement Number: 2019-FMAP-NA5-01

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

FOR THE OPERATIONS & MAINTENANCE ACTIVITIES

A PART OF THE FLOOD MAINTENANCE ASSISTANCE PROGRAM
UNDER
BUDGET ACT OF 2018 (Stats. 2018, ch. 29, Item 3860-001-0001)
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FUNDING AGREEMENT BETWEEN
THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES)
AND
CITY OF SACRAMENTO
2019-FMAP-NA5-01

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the City of Sacramento, a local flood maintaining agency in the 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:

1. PURPOSE. State shall provide funding from the Budget Act of 2018 (Stats. 2018, ch. 29, Item 3860-001-0001) to Funding Recipient to assist in financing operations and maintenance activities as set forth in Exhibit A (Project).

2. TERM OF FUNDING AGREEMENT. The term of this Funding Agreement begins on the date this Funding Agreement is initially executed by State, through final plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by December 31, 2019, and no funds may be requested after June 30, 2019.

3. FUNDING AMOUNT. The maximum amount payable by the State under this Agreement shall not exceed $420,000.

4. BASIC CONDITIONS. State shall have no obligation to disburse money under this Funding Agreement until Funding Recipient has satisfied the following conditions:
   
   A. Funding Recipient provides sufficient record for operations and maintenance activities and actual expenditures, as stated in their submittal package.
   
   B. Funding Recipient submits a new Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) Assurance Agreement executed with the Central Valley Flood Protection Board for the Funding Recipient's entire jurisdiction.
   
   C. For the term of this Funding Agreement, Funding Recipient submits timely Quarterly Progress Reports as required by Paragraph 10, “Submission of Reports.”
   
   D. Funding Recipient submits all deliverables as specified in Paragraph 10 of this Funding Agreement and in Exhibit A.
   
   E. Prior to the commencement of implementation activities, for work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Funding Agreement until the following actions are performed:
      
      i. Funding Recipient submits to the State all applicable environmental permits as indicated on the Environmental Information Form to the State,
      
      ii. Documents that satisfy the CEQA process are received by the State,
      
      iii. State has completed its CEQA compliance review as a Responsible Agency, and
      
      iv. Funding Recipient receives written concurrence from the State of Lead Agency’s CEQA document(s) and State notice of verification of environmental permit submittal.

State’s concurrence of Lead Agency’s CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Funding Recipient must also demonstrate that it has complied with all applicable requirements of the National...
Environmental Policy Act (NEPA) by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to implementation.

5. **DISBURSEMENT OF FUNDS.** State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or State laws, rules, or regulations. Any and all money disbursed to Funding Recipient under this Funding Agreement shall be deposited in a separate account and shall be used solely to pay Eligible Costs.

6. **ELIGIBLE COSTS.** Funding Recipient shall apply State funds received only to eligible Costs in accordance with applicable provisions of the law and Exhibit B. Eligible Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, permit fees, preparation of environmental documentation, environmental mitigations, monitoring, and maintenance activities. Only work performed after the execution of this Agreement shall be eligible for reimbursement.

Unless otherwise noted, costs that are not eligible for reimbursement with State funds cannot be counted as Funding Match. Costs that are not eligible for reimbursement include but are not limited to the following items:

A. Costs, other than those noted above, incurred prior to the execution of this Agreement.
B. Purchase and maintenance of general use vehicles.
C. Replacement of existing funding sources for ongoing programs.
D. Travel and per diem costs.
E. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
F. Purchase of land or interests in land other than those authorized in Exhibit A.
G. Purchase or construction of new facilities.
H. Utility costs.
I. Overhead and indirect costs. “Indirect Costs” means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient’s organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.

7. **METHOD OF PAYMENT.** Funds shall be disbursement to Funding Recipient after the disbursement requirements in Paragraph 4 "Basic Conditions" are met and in accordance with Exhibit B. Any funds provided in advance of actual expenditures shall be spent on Eligible Project Costs within six (6) months of disbursement from the State. Failure to provide adequate documentation on the use of any advanced funds shall constitute a material breach of this Agreement subject to the default provisions in Paragraph 9, "Default Provisions." Any funds not advanced in accordance with Exhibit B, the State will disburse to Funding Recipient, following receipt from Funding Recipient via electronic format invoice(s) for costs incurred and Quarterly Progress Reports as required by Paragraph 10, "Submission of Reports." Payment will be made no more frequently than quarterly, in arrears, upon receipt of an invoice bearing the Funding Agreement number.

Advance funds may be dispersed to Funding Recipient for eligible O&M activities as described in Exhibit B. State will notify Funding Recipient, in a timely manner, whenever, upon review of an Invoice, State determines that any portion or portions of the costs claimed are not Eligible Costs or is not supported by...
documentation or receipts acceptable to State. Funding Recipient may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by Funding Recipient shall include the following information:

A. Costs incurred for work performed during the funding period identified in the particular invoice.

B. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:

   i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.

   ii. Invoices must be itemized based on the categories (i.e., tasks) specified in Exhibit B. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).

   iii. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.

   iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State’s funding amount, as set forth in Exhibit B.

   v. Funding Recipient or their representative shall submit invoices and quarterly reports in electronic format to the following project manager: Jeff H. Van Gilder, Senior Engineering Geologist (jeff.VanGilder@water.ca.gov)

All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Funding Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Funding Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D.5 and refer the matter to the Attorney General’s Office or the appropriate district attorney’s office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

8. WITHHOLDING OF DISBURSEMENTS BY STATE. If State determines that the Project is not being implemented in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply 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 State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 9, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by State. State may consider Funding Recipient’s refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Paragraph 9, “Default Provisions.” If State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to this paragraph, 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 and the Funding Agreement shall no longer be binding on either party.
9. **DEFAULT PROVISIONS.** Funding Recipient will be in default under this Funding Agreement if any of the following occur:

A. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;

B. Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement;

C. Failure to abide by the terms of the OMRR&R Agreement with the Central Valley Flood Protection Board.

D. Failure to make any remittance required by this Funding Agreement including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.

E. Failure to submit timely progress reports.

F. Failure to routinely invoice State.

Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:

A. Declare the funding be immediately repaid.

B. Terminate any obligation to make future payments to Funding Recipient.

C. Terminate the Funding Agreement.

D. Take any other action that it deems necessary to protect its interests.

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

10. **SUBMISSION OF REPORTS.** The submittal and approval of all reports or invoices is a requirement for the successful completion of this Funding Agreement. Reports or invoices shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports or invoices shall be submitted to the State's Project Manager via electronic mail provided. If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F. The timely submittal of reports verifying progress is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State of a Funding Completion Report is a requirement for the subsequent release of any funds to the Funding Recipient in any Fiscal Year.

A. Quarterly Progress Reports: Funding Recipient shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be submitted to the State's Project Manager via electronic mail to the address provided. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipients activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than July 31, 2019, with future reports then due on successive three-month increments basis.

B. Closeout Report: Funding Recipient shall prepare and submit to State a Closeout Report. Funding Recipient shall submit a Closeout Report within ninety (90) calendar days of work completion. The report shall include, in part, a description of actual work done, any changes or amendments to the work plan, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project.
11. **NOTIFICATION OF STATE.** Funding Recipient shall promptly notify State, in writing, of the following items:

   A. Events or proposed changes that could affect the scope, budget, work performed, or schedule under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of the O&M activities will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.

   B. Any public or media event publicizing the accomplishments and/or results of this Funding Agreement and provide the opportunity for attendance and participation by State’s representatives. Funding Recipient shall make such notification at least 14 calendar days prior to the event.

   C. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during implementation, the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.

   D. The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.

12. **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. Notices may be transmitted by any of the following means:

   A. By delivery in person.

   B. By certified U.S. mail, return receipt requested, postage prepaid.

   C. By “overnight” delivery service; provided that next-business-day delivery is requested by the sender.

   D. By electronic means.

   E. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar 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 electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

13. **PERFORMANCE EVALUATION.** Upon completion of this Funding Agreement, Funding Recipient’s performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Funding Recipient.

14. **FUNDING AGREEMENT REPRESENTATIVES.** The Funding Agreement Representatives during the term of this Funding Agreement are as follows:

   Department of Water Resources
   Project Representative:
   Name: **Jeff H. Van Gilder**
   Title: **Program Manager**
   Mailing Address: 3310 El Camino Ave., Rm. 140
   Sacramento, CA 95821
   Phone: (916) 574-2745
   Email: Jeff.VanGilder@water.ca.gov

   City of Sacramento
   Project Representative:
   Name: **Michael Gonsalves**
   Title: **Supervisor**
   Mailing Address: 5730 24th Street, Bldg. 19
   Sacramento, CA 95822
   Phone: (916) 808-2457
   Email: ____________
Direct all inquiries to the Project Manager:

Department of Water Resources
Project Manager:
Name: Marisela Peña
Title: Water Resources Engineer
Mailing Address: 3310 El Camino Ave., Suite 140
Sacramento, CA 95821
Phone: (916) 574-0328
Email: marisela.pena@water.ca.gov

City of Sacramento
Project Manager:
Name: Connie Perkins
Title: Senior Engineer
Mailing Address: 1395 35th Ave.
Sacramento, CA 95822
Phone: (916) 808-1914
Email: cperkins@cityofsacramento.org

Either party may change its Project Representative or Project Manager upon written notice to the other party.

15. STANDARD PROVISIONS AND INTEGRATION. This Funding Agreement is complete and is the final Agreement between the parties. The following Exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit A – Work Plan
Exhibit B – Budget
Exhibit C – Schedule
Exhibit D – Standard Conditions
Exhibit E – Funding Recipient Resolution
Exhibit F – Report Formats and Requirements
Exhibit G – State Audit Document Requirements and Funding Match Guidelines for Funding Recipients
IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

__________________________  __________________________
Joni Ericson, Division Chief  William O. Busath, Director
Division of Flood Management  City of Sacramento
Date____________________  Date____________________

Approved as to Legal Form and Sufficiency

__________________________
Robin Brewer
Assistant Chief Counsel, Office of Chief Counsel
Date____________________
Exhibit A
WORK PLAN

Funding Recipient must prepare a work plan describing all tasks and purchases expected to occur under this agreement. The funding recipient may revise the work plan if needed, but must obtain approval from DWR.

Task 1: Prepare USACE LOI or SWIF to establish eligibility under PL 84-99.
List the tasks/steps involved to obtain the LOI or SWIF if needed.

Task 2: Prepare the technical/engineering reports needed to secure sufficient funding to manage the SPFC facilities.
List the tasks/steps involved to prepare the technical and engineering reports if needed.

Task 3: Administrative Activities

Task 4: Describe and list the O&M activities and estimated cost to be performed.
Such activities may include the following:

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair
- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

Other activities as needed if not listed.

Task 5: List and describe the need for any equipment and/or materials that will be purchased under this Agreement.
Exhibit B

BUDGET

Provide a cost estimate for the tasks or purchases described in Exhibit A. Administrative costs should not exceed 5 percent of the total funding. Funds may only be advanced for Task 1 and Task 2 and shall not exceed $40,000.

If any tasks are removed from Exhibit A, then remove and renumber tasks below.

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<td>Task 5 – Equipment</td>
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<td>$ 420,000.00</td>
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</table>
Exhibit C

SCHEDULE

Provide a schedule of O&M tasks to be performed. This schedule may be general. This will allow flexibility for tasks to be performed within the term of this agreement.
Exhibit D

STANDARD CONDITIONS

D.1. 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 separate 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.

D.2. ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE: Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient’s headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: “Funding for this project has been provided in full or in part from the State of California through an agreement with the State Department of Water Resources.” The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

D.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. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.

D.4. AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

D.5. AUDITS: State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State’s specifications, at Funding Recipient’s expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Paragraph 9 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or its contractor

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or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.

D.6. **BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this 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 make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the 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.

D.7. **CEQA:** Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State’s Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 9.

D.8. **CHILD SUPPORT COMPLIANCE ACT:** 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 Family Code section 5200 et seq.; 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.

D.9. **CLAIMS DISPUTE:** Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the 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 this Agreement to implement the terms of any such resolution.

D.10. **COMPETITIVE BIDDING AND PROCUREMENTS:** Funding Recipient’s contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services’ *State Contracting Manual* rules must be followed and are available at: [https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting](https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting).

D.11. **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.
D.12. **CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.

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 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.

D.13. **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.

D.14. **DISPOSITION OF EQUIPMENT:** Funding Recipient shall provide to State, not less than 30 calendar 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 $5,000.00 per item. Within 60 calendar 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.

D.15. **DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (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.

B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

   i. The dangers of drug abuse in the workplace,
ii. Funding Recipient's policy of maintaining a drug-free workplace,

iii. Any available counseling, rehabilitation, and employee assistance programs, and

iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:

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

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

D.16. **FUNDING RECIPIENT'S RESPONSIBILITIES:** Funding Recipient and its representatives shall:

A. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).

B. Accept and agree to comply with all terms, provisions, conditions, and written 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 funding.

C. Comply with all applicable California, federal, and local laws and regulations.

D. Implement the Project in accordance with applicable provisions of the law.

E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.

F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.

G. Be solely responsible for design, construction, and operation and maintenance of projects within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.

H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The 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 payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.

D.17. **GOVERNING LAW:** This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

D.18. **INDEMNIFICATION:** Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
D.19. **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.

D.20. **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.

D.21. **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.

D.22. **LABOR CODE COMPLIANCE**: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: [http://www.dir.ca.gov/lcp.asp](http://www.dir.ca.gov/lcp.asp). For more information, please refer to DIR’s Public Works Manual at: [http://www.dir.ca.gov/dlse/PWManualCombined.pdf](http://www.dir.ca.gov/dlse/PWManualCombined.pdf). The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

D.23. **MODIFICATION OF OVERALL WORK PLAN**: At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibits A, B, and C which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State’s Program Manager in writing.

D.24. **NONDISCRIMINATION**: During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or 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.
D.25. **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.

D.26. **PERFORMANCE BOND:** Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than $25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)

D.27. **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.

D.28. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The 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.

D.29. **PROJECT ACCESS:** The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.

D.30. **REMAINING BALANCE:** In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify the Grantee stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Grant Agreement.

D.31. **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.

D.32. **RETENTION:** Notwithstanding any funds advanced, the State shall withhold ten percent (10%) of the funds requested by the Funding Recipient for reimbursement of Eligible Costs until the Project is completed and Final Report is approved. Any retained amounts due to the Funding Recipient will be promptly disbursed to the Funding Recipient, without interest, upon completion of the Project.

D.33. **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.

D.34. **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.
D.35. **SUSPENSION OF PAYMENTS:** This Funding Agreement may be subject to suspension of payments or termination, or both 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 in this Funding Agreement.

D.36. **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.

D.37. **TERMINATION BY FUNDING RECIPIENT:** Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.

D.38. **TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 9, 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 including but not limited to reasons of default under Paragraph 9.

D.39. **TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on 30 days' advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.

D.40. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.

D.41. **TIMELINESS:** Time is of the essence in this Funding Agreement.

D.42. **UNION ORGANIZING:** Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 15645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:

A. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.

B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.

C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.

D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

D.43. **VENUE:** The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.

D.44. **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.
Exhibit E

RESOLUTION ACCEPTING FUNDS

Resolution No. ____________________________

Resolved by the ____________________________
of the City of Sacramento ____________________________
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 City of Sacramento ____________________________ by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: ____________________________ are hereby accepted.

The ____________________________ of the City of Sacramento ____________________________ is hereby authorized and direct to sign a Project Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement.

Passed and adopted at a regular meeting of the ____________________________ of the City of Sacramento ____________________________ on ____________________________.

Authorized Signature ____________________________

Printed Name ____________________________

Title ____________________________

Clerk/Secretary ____________________________
Exhibit F

REPORT FORMATS AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

1. PROGRESS REPORTS

   Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information.

   FUNDING AGREEMENT STATUS

   Describe the work performed under this Funding Agreement and outlined in Exhibit A during the time period covered by the report including but not limited to:

   PROJECT INFORMATION

   • Legal matters
   • Engineering Evaluations
   • Environmental matters
   • Status of permits, easements, rights-of-way, rights of entry and approvals as may be required by other State, federal, and/or local agencies
   • Major accomplishments during the quarter (i.e. tasks completed, milestones met, meetings held or attended, 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
   • Estimate the percentage completion of the overall project
   • Identify key issues that need to be resolved
   • Photos documenting progress

   COST INFORMATION

   • Provide a list showing all project 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
   • 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

   SCHEDULE INFORMATION

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

2. **PROJECT COMPLETION REPORT**

Project Completion Reports shall generally use the following format.

**EXECUTIVE SUMMARY** – Should include a brief summary of project information and include the following items:

• Brief description of work proposed to be done in the original application
• Description of actual work completed and any deviations from the work plan identified in the Funding Agreement

**REPORTS AND/OR PRODUCTS** – The following items should be provided

• Final Evaluation report
• Electronic copies of any data collected, not previously submitted
• As-built drawings
• Final geodetic survey information
• Self-Certification that the Project meets the stated goal of the funding agreement (e.g. 100-year level of flood protection, HMP standard, PI-84-99, etc.)
• Project photos
• Discussion of problems that occurred during the work and how those problems were resolved
• A final project schedule showing actual progress versus planned progress

**COSTS AND DISPOSITION OF FUNDS** – A list of showing:

• The date each invoice was submitted to State
• The amount of the invoice
• The date the check was received
• The amount of the check (If a check has not been received for the final invoice, then state this in this section.)
• A summary of the payments made by the Funding Recipient for meeting its cost sharing obligations under this Funding Agreement.
• A summary of final funds disbursement including:
  o Labor cost of personnel of agency/ major consultant /sub-consultants. Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc.
  o Evaluation cost information, shown by material, equipment, labor costs, and any change orders
  o Any other incurred cost detail
  o A statement verifying separate accounting of funding disbursements
• Summary of project cost including the following items:
  o Accounting of the cost of project expenditure;
  o Include all internal and external costs not previously disclosed; and
  o A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

**ADDITIONAL INFORMATION** – Any relevant additional Information should be included.
Exhibit G

STATE AUDIT DOCUMENT REQUIREMENTS AND 
FUNDING MATCH GUIDELINES FOR FUNDING RECIPIENTS

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

State Audit Document Requirements

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

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

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

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

**Cash Documents:**
1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.
**Accounting Records:**
1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

**Administration Costs:**
1. Supporting documents showing the calculation of administration costs.

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

**Project Files:**
1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.
Appendix 2

Attorney Certification

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

- Is the Applicant a political subdivision of the State of California?  ( )Yes  ( )No
  Citation: ________________________________

- Does the Applicant have legal authority to enter into a Funding Agreement with the State of California?  ( )Yes  ( )No
  Citation: ________________________________

- What steps are required by law for the Applicant to sign a Funding Agreement with the State?
  Citation: ________________________________

- What is the statutory authority under which the Applicant may obtain funds for the purpose, amount, and duration requested?
  Citation: ________________________________

- What is the statutory authority under which the Applicant was formed and is authorized to operate?
  Citation: ________________________________

- Is the Applicant required to hold an election before entering into a funding contract with the State?  ( )Yes  ( )No
  Citation: ________________________________
• Will an agreement between the Applicant and the State be subject to review and approval by other governmental agencies? ( )Yes       ( )No
Identify all such agencies:__________________________________________

Citation:__________________________________________

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

________________________________________________________________________

________________________________________________________________________

____

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

Citation:__________________________________________

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

By ___________________________ Date ___________________________

(Signature of Applicant Agency’s Attorney)

(Printed Name of Applicant Agency’s Attorney) (Title) (Bar No.)

(Name of Applicant Agency)
Appendix 3

OMRR&R Agreement

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
CITY OF SACRAMENTO
FOR
2019-FMAP-NA5-01

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 City of Sacramento ("Funding Recipient") on this ______ day of ____________, 2019 in view of the following circumstances:

1. Flood Maintenance Assistance Program (FMAP) funds were authorized and appropriated by the California legislature for costs associated with improving the operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure of Local Maintaining Agencies (LMAs), pursuant to Water Code Section 12878 et seq.

2. State funding is available for Eligible Activities pursuant to the FMAP:

   The State, acting by and through the Department of Water Resources, has solicited applications for funding for its FMAP 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 City of Sacramento ("Funding Agreement") for 2019-FMAP-NA5-01 ("Funding Agreement").

   The Funding Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of State Plan of Flood Control facilities.

   The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement for State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.
3. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

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.

“Eligible Activities:” The development of System Wide Improvement Framework plans (SWIFs), and associated supporting documents, such as the required Letter of Intent to USACE to create a SWIF, and any of the activities identified by the California Department of Water Resources and U.S. Army Corps of Engineers inspections that help achieve acceptable level of maintenance to assure system performance are eligible for funding from FMAP. This includes all activities required under Code of Federal Regulations, title 33, section 208.10 and the O&M Manual Standards, such as:

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair
- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

“Funding Agreement:” The agreement between the State of California Department of Water Resources and the City of Sacramento for 2019-FMAP-NA5-01 dated mm/dd/yyyy.

“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 portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient in accordance with applicable federal law, including without limitation, compliance with O&M
requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.

“OMRR&R Agreement:” This agreement between the Central Valley Flood Protection Board and the City of Sacramento for OMRR&R of the State Plan of Flood Control within the jurisdiction of City of Sacramento.

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

“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 of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. The duties of the Funding Recipient to perform OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient shall be accomplished in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, and the flood control system of which those facilities are a part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.

2. To defend, indemnify, hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and agents and consultants, as well as their successors and assigns, free and harmless from any and/or all claims, damages, liabilities, charges, losses, expenses, and costs including the State’s attorneys’ fees including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

3. To defend, indemnify, hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys, agents and consultants, as well as their successors and assigns free and harmless from any and/or all claims or damages, liabilities, charges, losses, expenses, and costs including the State’s attorneys’ fees 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 State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient 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 OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. Specifically, the Funding Recipient shall be responsible for OMRR&R in accordance with applicable federal laws, including without limitation, compliance with O&M requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, 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 land which it owns or controls for access to 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 State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient located at or in conjunction with any present or future flood control plan if in the reasonable judgment of State, the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.

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

If the Funding Recipient 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 of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient 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, (except in the case of an emergency), 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. 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.

SECTION II: Hazardous Substances

The Funding Recipient acknowledges the 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 & Safety Code, § 25310 et seq.) or other statutes or
regulations (collectively referred to as “state and federal Hazardous Substances Laws”) on
lands necessary for 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 OMRR&R of State Plan of Flood Control facilities within the
jurisdiction of the Funding Recipient 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 State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient 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 OMRR&R of the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

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 portions State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, 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, including all reasonable costs and attorneys’ fees, including, but not limited to, those charged to it by the California Office of Attorney General, that the State incurs in connection with the defense of any action brought against it 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 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. 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: 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 V: 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 VI: 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.

SECTION VII: 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 City of Sacramento
William O. Busath, Director
City of Sacramento
5730 24th Street, Bldg.19
Sacramento, CA 95822

If to the Board
Leslie Gallagher, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 151
Sacramento, CA 95821

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 VIII: Standard Conditions
This OMRR&R Agreement incorporates by reference the standard conditions that are included in Exhibit 1 to this OMRR&R Agreement.

SECTION IX: 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 2 to this OMRR&R Agreement.
IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

THE CENTRAL VALLEY FLOOD PROTECTION BOARD

By

__________________________
Leslie Gallagher, Executive Officer
Central Valley Flood Protection Board

Date: ________________

Approved as to Legal Form and Sufficiency:

__________________________
Robin E. Brewer, Asst. Chief Counsel
Office of the Chief Counsel

Date: ________________

CITY OF SACRAMENTO

By

__________________________
William O. Busath, Director
City of Sacramento

Date: ________________

Approved as to Legal Form and Sufficiency:

__________________________
Name, Title

Date: ________________
Exhibit 1

STANDARD CONDITIONS OF OMRR&R AGREEMENT

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 therein 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 PROPERTY: 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 existing portions of the State Plan of Flood Control facilities within the jurisdiction of the funding recipient, 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 property be remitted to State.

7. NO THIRD-PARTY RIGHTS: The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. OPINIONS AND DETERMINATIONS. Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

9. SUIT ON OMRR&R AGREEMENT: Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.

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

11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.

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

13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided.

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: All participants are subject to State and Federal conflict of interest laws. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.

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 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. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all applicable provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to this OMRR&R Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: https://www.dir.ca.gov/lcp.asp. For more information, please refer to DIR’s Public Works Manual at: https://www.dir.ca.gov/dlse/PWManualCombined.pdf. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.

17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. NONDISCRIMINATION CLAUSE: During the performance of this OMRR&R Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
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 Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (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.

B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
   i. The dangers of drug abuse in the workplace,
   ii. Funding Recipient’s policy of maintaining a drug-free workplace,
   iii. Any available counseling, rehabilitation, and employee assistance programs, and
   iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
   i. Will receive a copy of Funding Recipient’s drug-free policy statement, and
   ii. Will agree to abide by terms of Funding Recipient’s condition of employment, contract or subcontract.

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, throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.

23. CHILD SUPPORT COMPLIANCE ACT: 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 Family Code section 5200 et seq.; 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. INSPECTIONS OF OMRR&R 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.

25. ACCESS: The Funding Recipient shall ensure that the State, or any authorized representative of the foregoing, will have safe and suitable access to the portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient at all reasonable times during the term of this Agreement.

26. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.
Exhibit 2

OMRR&R Resolution

Resolution No.______________________________

Resolved by the Governing body, city council, or other________________________________________
of the City of Sacramento______________________________________________

that pursuant and subject to all of the terms and provisions of Budget Act of 2018 (Stats. 2018, ch. 29), that funds awarded to City of Sacramento by the Department of Water Resources for a Flood Maintenance Assistance Program project titled: 2019-FMAP-NA5-01 have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires City of Sacramento to assume responsibility for operation and maintenance of 2019-FMAP-NA5-01

Therefore, the Presiding Officer, President, Other of the Governing body, city council, or other is hereby authorized and directed to sign an operation, maintenance, repair, rehabilitation, and replacement agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the Governing body, city council, or other________________________________________
of the City of Sacramento______________________________________________
on Date___________________________.

Authorized Signature: ____________________________

Printed Name: ____________________________

Title: ____________________________

Clerk/Secretary: ____________________________
Exhibit 3

State Audit Requirements

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

List of Documents for Audit

Internal Controls

1. Organization chart (e.g., Agency’s overall organization chart and organization chart for the State-funded Program/Project).

2. Written internal procedures and flowcharts for the following:
   a) Receipts and deposits
   b) Disbursements
   c) State reimbursement requests
   d) Expenditure tracking of State funds
   e) Guidelines, policy, and procedures on State-funded Program/Project

3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.

4. Prior audit reports on the State-funded Program/Project.

State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.

2. A listing of all grants, loans or subventions received from the State.

3. A listing of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners documents, if applicable.

2. Contracts between the Agency and member agencies as related to the State-funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.

2. Documentation linking subcontractor invoices to State reimbursement, requests, and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

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

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

   **Administration Costs:**
   1. Supporting documents showing the calculation of administration costs.

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

   **Project Files:**
   1. All supporting documentation maintained in the Project files.
   2. All Funding Agreement related correspondence.