

Appendix 1

OMRR&R Agreement

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION
AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
Lake County Watershed Protection District
FOR
2025-FMAP-LCWPD-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 Lake County Watershed Protection District ("Funding Recipient") on this _____ day of _____, _____ 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 Lake County Watershed Protection District for 2025-FMAP-LCWPD-01 ("Funding Agreement").

The Funding Agreement provides that the Funding Recipient will be responsible for 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:

“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 Lake County Watershed Protection District
for 2025-FMAP-LCWPD-01 dated _____.

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

“OMRR&R:” Operation, maintenance, repair, replacement, and rehabilitation of the 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 Lake County Watershed Protection District for OMRR&R of the State Plan of Flood Control within the jurisdiction of Lake County Watershed Protection District.

“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 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 and damages, 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. Upon demand, the Funding Recipient shall reimburse the Board in full for all reasonable costs and attorneys' fees, including, but not limited to, those charged to it by the California Office of Attorney General, that the Board incurs in connection with the defense of any action brought against the Board 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 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 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. Upon demand, the Funding Recipient shall reimburse the Board in full for all reasonable costs and attorneys' fees,

including, but not limited to, those charged to it by the California Office of Attorney General, that the Board incurs in connection with the defense of any action brought against the Board 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 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 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. Upon demand, the Funding Recipient shall reimburse the State for 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 arising from 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.
- 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 require or permitted to be given under this OMRRR 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 Lake County Watershed Protection District

**Lake County Watershed Protection District
255 N. Forbes St. – Rm. 309
Lakeport, CA 95453**

If to Board

**Chris lief, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 170
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 A 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 OMRRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Exhibit B to this OMRR&R Agreement.

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

**The Central Valley Flood
Protection Board**

Lake County Watershed Protection District

By

By

Chris Lief, Executive Officer
Central Valley Flood Protection Board

Scott De Leon, Water Resource Director
Lake County Watershed Protection District

Date: _____

Date: _____

Approved as to legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

Jit Dua, General Counsel
Central Valley Flood Protection Board

Lloyd Guintivano, County Counsel
County of Lake

Date: _____

Date: 05/29/2024