

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

AGREEMENT NUMBER: 2023-FSRP2021-NA09-01

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

LAKE COUNTY WATERSHED PROTECTION DISTRICT

FOR

NA 9 PATROL ROAD REPAIR

**FUNDED UNDER THE
FLOOD SYSTEM REPAIR PROGRAM**

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FOR FUNDING RECIPIENTS

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
PROJECT PARTNERSHIP AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
LAKE COUNTY WATERSHED PROTECTION DISTRICT
UNDER THE FLOOD SYSTEM REPAIR PROGRAM

THIS PROJECT PARTNERSHIP AGREEMENT, entered into by and between the State of California, acting by and through the Department of Water Resources, herein referred to as the "State" and the **Lake County Watershed Protection District**, a public agency in the County of **Lake**, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

The terms listed below shall have the meaning indicated wherever used in this Project Partnership Agreement (Agreement).

"Agreement to Assume Responsibility to Operate and Maintain" means an agreement entered into by the Funding Recipient, if applicable, with an appropriate legal entity to assume responsibility for Operation and Maintenance on terms similar to those in Exhibit D to this Project Partnership Agreement in accordance with the requirements of Paragraph 22.

"Credit" means Funding Recipient expenditures toward Eligible Project Costs incurred after the Local Maintaining Agency (LMA) passes a resolution accepting the funds that are recognized by the State as part of the local cost share for the Project.

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

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

"Funding Recipient" means Lake County Watershed Protection District, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Project Partnership Agreement, and its successors and assigns.

"Guidelines" means the Guidelines for the Flood System Repair Program (FSRP) dated July 2022, which govern the process by which Department reviews and selects FSRP repair projects to fund, and the resulting implementation process.

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

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

“Maintenance Costs” means ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

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

“O&M” means operation and maintenance of the Project.

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

“Overall Work Plan” means the plan described in Exhibit A-1.

“Post Construction Performance Reports” means the reports required by Paragraph 20(d) and further provided in the O&M Agreement.

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

“Project” means the project described in the Overall Work Plan.

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

“Project Completion Report” means the report required by Paragraph 20(c) and further described in Exhibit H.

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

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

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

“Quarterly Progress Reports” means the reports required by Paragraph 20(b) and further described in Exhibit C.

“Quarterly Work Plans” means the reports required by Paragraph 20(a) and further described in Exhibit C.

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

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

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

“**Statement of Costs**” means a statement of incurred costs submitted pursuant to Paragraph 13.

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

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

“**USACE**” means the United States Army Corps of Engineers.

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

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing a Flood System Repair Program project. Funds may be used only as provided in this Project Partnership Agreement for Eligible Project Costs for the Project described in Exhibit A-1, Overall Work Plan.
2. **TERM OF PROJECT PARTNERSHIP AGREEMENT.** The term of the Project Partnership Agreement shall be from the latest date of execution by the Department of Water Resources and approval by the Department of General Services, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by **December 31, 2025** and no funds may be requested after **June 30, 2026**.
3. **PROJECT SCHEDULE.** Funding Recipient shall diligently perform or cause to be performed all project work in accordance with the Project Schedule as shown in Exhibit A, Article A-1-B or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Article A-1-B, the State reserves the right to withhold funds as provided in Paragraphs 15-17 of this Agreement.
4. **PROJECT COST.** The reasonable cost of building out the Project is estimated to be **\$227,082.00**.
5. **LIMIT ON STATE FUNDS.** The maximum amount payable by the State under this Agreement shall not exceed **\$193,020.00**.
6. **FUNDING RECIPIENT'S COST.** Funding Recipient agrees to fund the difference, if any, between the actual Project Costs and the amount paid by the State for its share of Eligible Project Costs.
7. **ELIGIBLE PROJECT COSTS.** Funding Recipient shall only apply State funds for Eligible Project Costs. Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after Department has issued an Eligibility Notice to the LMA for the Project to be performed pursuant to the Project Partnership Agreement. The Guidelines provide a summary of the costs which are considered eligible or non-eligible project costs.
8. **COST SHARING BY THE STATE AND FUNDING RECIPIENT.**
 - a) The State will pay **Eighty-Five percent (85%)** of Eligible Project Costs. Funding Recipient will be responsible for paying the balance. The Funding Recipient's cost share shall be consistent with the Guidelines for Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects and enhanced cost share provisions of the FSRP Guidelines unless otherwise identified in this Paragraph
9. **RESERVED.**
10. **REQUIREMENTS FOR DISBURSEMENT.** Funding Recipient shall meet all conditions precedent defined in the subparagraphs below before State shall be obligated to disburse any funds pursuant to this Project Partnership Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Project Partnership Agreement. State shall have no obligation to disburse money under this Project Partnership Agreement unless:

- a) Funding Recipient provides assurance that O&M Agreement requirements as provided for in Paragraph 22 of this Project Partnership Agreement will be adhered to as outlined.
- b) Funding Recipient has demonstrated compliance with (i) all applicable requirements of the CEQA and NEPA and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, Project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements.

In addition to the requirement that the Funding Recipient to demonstrate completion of all required environmental documents, the Department may not issue the approval letter required for combined design and construction projects under Paragraph 1 of this Agreement until it has completed its environmental work and issued a notice of decision in connection with Project Element, Project Feature or Project for which the approval letter has been requested. The Department's concurrence of the Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required.

- c) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports as required by Paragraph 20.
11. **ADVANCE WORK APPROVALS BY STATE.** At least forty-five days prior to awarding a construction contract or initiating construction, whichever is earlier, for any Project, Project Element, or Project Feature, Funding Recipient shall submit to State engineering plans and specifications certified by a California Registered Civil Engineer. No disbursements of funds for the work described will be made until the State has approved the engineering plans and specifications.

Except for the first Quarterly Work Plan, at least forty-five days prior to disbursement of funds by State, the Funding Recipient shall submit a Quarterly Work Plan in accordance with Paragraph 20(a). No disbursement of funds for the work described in a Quarterly Work Plan will be made until the State has approved the Quarterly Work Plan.

If the Overall Work Plan includes design and construction work, such work may be completed in phases. The Funding Recipient may begin design work before its environmental documents are complete but may not begin the construction portion of the approved Project until all environmental work for the Project Element or Project Feature has concluded. An Overall Work Plan that contains both design and construction work has an additional, mid-Project, State approval requirement; when the project work transitions from design to construction, the Department must confirm, in writing, that the Project is eligible to move forward into construction. In circumstances where one Project Element or Project Feature is ready to begin construction, this approval letter may be issued, but only for the Project Element(s) or Project Feature(s) that are ready. An additional approval letter will be required from the Department for each subsequent Project Element or Project Feature. As described further in Paragraph 10(b) of this Agreement, this approval letter may not be issued if the Funding Recipient has not completed all necessary environmental work for the Project Element or Project Feature.

12. **PAYMENTS AND CREDITS FOR STATE SHARE OF ELIGIBLE PROJECT COSTS.** Eligible Project Costs will be paid or credited by the State in accordance with the cost sharing provisions in Paragraph 8 and according to one or more of the following methods:
- a) For all Eligible Project Costs, work will be divided into two categories: non-construction and construction. Though prior written approval is strongly advised any time the LMA anticipates it will request credit, the Department will consider, on a case-by-case basis, crediting non-construction work performed without prior written approval. In contrast, the Department must have issued prior written approval for actual construction work to be deemed creditable and any conditions described in the written approval must be met before the credit is afforded. The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction Project as defined in the Overall Work Plan. The Funding Recipient shall provide a

Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 16. The Statement of Costs shall be submitted within 45 days of the effective date of this Project Partnership Agreement. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs. The total credit issued may not exceed the LMA's share of the total project costs. The total credit plus Department's share of the total project costs may not exceed 90 percent of the total project cost.

- b) This subpart sets forth a process for advance payments of the State share of Eligible Project Costs. Advance payments are made on the basis of estimated budgets included in Quarterly Work Plans and are adjusted quarterly on the basis of a statement of actual Eligible Project Costs.

Pursuant to Paragraph 20, State shall pay in advance for approved Eligible Project Costs (excluding Real Estate Capital Outlay Costs) its cost share of the work covered in the Quarterly Work Plans submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 13. If State determines that advances in that quarter exceed actual state-share of costs in that same quarter, such amounts may be applied against expenses in succeeding quarters.

If State determines that advances exceed the State's share of total actual Eligible Project Costs, State may withhold future payments equal to amounts advanced in excess of the State's share of Eligible Project Costs, but only after Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Project Partnership Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of 10 percent (10%). This withholding will be held until the required Statements of Costs are provided, at which point the detailed expenditures shall be subject to withholding in accordance with Paragraph 15.

- 13. STATEMENT OF COSTS. The Funding Recipient shall provide State with a Statement of Costs or Statements of Cost, on forms provided by the State for all Eligible Project Costs.
 - a) Statements of Costs shall be filed by the Funding Recipient quarterly or as otherwise specified in this Paragraph. Funding Recipient shall provide a statement of the incurred Eligible Project Costs for work performed during the period identified in the statement. Each Statement of Costs shall also include: (1) information required to verify that claimed costs were incurred, such as contractor and vendor invoices and receipts for equipment and supplies; (2) a statement of Funding Recipient's payments made to cover its share of Eligible Project Costs, if applicable; and (3) a comparison of the actual incurred Eligible Project Costs with those projected in the Quarterly Work Plans and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Work Plan budget.
 - b) The State will review each Quarterly Work Plan and each Statement of Costs to determine whether claimed costs are, in the opinion of the State, Eligible Project Costs and whether the Funding Recipient has provided adequate information to verify that claimed expenses were incurred.
 - c) State may reject a Statement of Costs if: (1) it is submitted without signature of the Funding Recipient's authorized representative; (2) it is submitted under signature of a person other than the Funding Recipient's authorized representative per Exhibit E, or designee; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 13(g). State will notify Funding Recipient of any rejected Statement of Costs, and the reasons for the rejection.
 - d) A Statement of Costs containing a mathematical error will be corrected by State, after consultation with the Funding Recipient; and will thereafter be treated as if submitted in the corrected amount. State will provide Funding Recipient with notification of the corrected Statement of Costs.
 - e) State will notify Funding Recipient by mail, whenever, upon review of a Statement of Costs, State determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this Project Partnership Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Project Partnership Agreement; or (3) are not

supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). State and Funding Recipient shall then attempt to negotiate a resolution of the claim and adjust the Statement of Costs accordingly. Funding Recipient may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. If the claim remains disputed, it may be resolved in accordance with the dispute resolution process set forth in Paragraph 18. If Funding Recipient fails to submit adequate documentation curing the deficiency(ies) in a timely manner, State will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). The requirements for close-out of a Project, Element, or Feature are provided in Exhibit H. A Project, Project Element, or Project Feature will be considered completed when the Funding Recipient has provided the information specified in Exhibit H to the satisfaction of the State.

Upon completion or termination of the Project or any Project Element or Project Feature, Funding Recipient shall furnish to State, within sixty (60) days, a Final Statement of Costs for the Project, Project Element, or Project Feature. Periodic cost statements and the Final Statement of Costs shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as provided in Paragraph 5, and those costs that represent Funding Recipient's costs, as provided in Paragraph 6.

- f) All Statements of Costs, signed by the Funding Recipient's authorized representative per Exhibit E, or designee), shall include a statement that the submitted cost statement is correct to the best of his or her knowledge and belief after a reasonable investigation. The signed statement shall be submitted under penalty of perjury.
 - g) At the sole discretion of the State, the State may modify the requirements for preparation and submittal of Statements of Costs in order to improve administration of the State-Federal Flood Control System Modification Program. If the State opts to modify the requirements, it shall notify Funding Recipient in writing of the change(s).
14. **DISBURSEMENT.** Following the review of each invoice, State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes and to provisions as specified in this Project Partnership Agreement. Notwithstanding any other provision of this Project Partnership 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 Project Partnership Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.
15. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed for Real Estate Capital Outlay Costs, the State shall withhold ten percent (10%) of the State share until the Project Element of the Project for which the payment is made is completed or, if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed and the Funding Recipient has executed an Operation and Maintenance Agreement between the Central Valley Flood Protection Board and the Funding Recipient (Exhibit D). A Project, Project Element, or Project Feature shall not be considered completed until the requirements of Exhibit H have been met to the satisfaction of the State. Among these requirements are: (1) the work on such Project, Project Element, or Project Feature has been completed to the State's satisfaction; (2) a Final Statement of Costs has been submitted for Eligible Project Costs for the Project, Project Element, or Project Feature; (3) as-built drawings satisfactory to the State have been submitted to the State; and (4) for a Project, Project Element, or Project Feature, Funding Recipient provides a certification of a Registered Civil Engineer that that portion of the Project has been built in compliance with the plans approved by the State.

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

If State determines that the Project is not being constructed substantially in accordance with the provisions of this Project Partnership Agreement, or that Funding Recipient has failed in any other respect to comply substantially with the provisions of this Project Partnership Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests. If the Funding Recipient must remedy a failure to comply, and the remedy increases Eligible Project Costs, the State may disallow payment of the State's share of the increase in Eligible Project Costs.

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

16. **WITHHOLDING THE BALANCE OF FUNDING AMOUNT.** Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release the balance of the funds withheld pursuant to Paragraph 18 (other than requests for early release of funds made by the Funding Recipient pursuant to Exhibit G), that portion that has been disbursed shall be repaid within 60 days of when the State notifies the Funding Recipient of its decision. Refusal of Funding Recipient to repay within 60 days may, at the option of State, be considered a material breach of this Agreement and treated as default under Paragraph 18.
17. **WITHHOLDING THE ENTIRE FUNDING AMOUNT.** If State notifies Funding Recipient of its decision to withhold the entire funding amount pursuant to Paragraph 15, this Project Partnership Agreement shall terminate, and the State shall no longer be required to provide funds under this Project Partnership Agreement.
18. **DEFAULT PROVISIONS AND DISPUTE RESOLUTION.**
 - a) **Events of Default.** Funding Recipient will be in default under this Project Partnership Agreement if any of the following occur:
 - 1) Material breach of this Project Partnership Agreement or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations.
 - 2) Making any false warranty, representation, or statement with respect to this Project Partnership Agreement or the application filed to obtain this Project Partnership Agreement.
 - 3) Failure to make any remittance required by this Project Partnership Agreement, including any remittance recommended because of an audit conducted pursuant to Paragraph B.4.
 - b) **Consequences of Default.** Should an event of default occur, State shall provide a notice of default to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, which shall be no less than 10 days from the notice of default, State may do any or all, of the following:
 - 1) Terminate the Project Partnership Agreement and obligation to make future payments to the Funding Recipient.
 - 2) Complete the Project using its own resources.
 - 3) Contract with the current or any other contractor to complete the Project.
 - 4) Require that the Funding Recipient return all or a portion of state funds disbursed hereunder.
 - 5) Take any other action that the State deems necessary to protect its interests and fulfill its fiduciary responsibilities.
 - c) **Dispute Resolution.**

Any claim that Funding Recipient may have regarding the performance of this Project Partnership Agreement, including but not limited to claims for an extension of time, shall be submitted in writing to the

Program Manager at the Department of Water Resources, within thirty (30) calendar days of Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a good faith resolution of such claim and process an amendment to the Project Partnership Agreement to implement the terms of any such resolution, if deemed necessary by the Parties.

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

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

19. RESERVED.

20. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.

- a) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Project Partnership Agreement. Within seven (7) days of the effective date of this Project Partnership Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Project Partnership Agreement and the end of that calendar quarter and then quarterly thereafter. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days before the work covered by the plan is scheduled to begin. Exhibit C, Quarterly Work Plan and Report Formats, provides an example template for the Quarterly Work Plan.
- b) Quarterly Progress Reports: Funding Recipient shall submit progress reports on the status of the Project to State. Progress reports shall be filed quarterly. No later than 60 days after the time period covered by a Quarterly Work Plan, the Funding Recipient shall submit a Quarterly Progress Report for the time period covered by the Quarterly Work Plan. The submittal and approval of these reports is a requirement for continued disbursement of State funds. Quarterly Progress reports shall summarize the work completed during the reporting period, include a statement of construction progress compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project. The reports shall include total interest earned to date on State funds, and any lease credits due to the State from lease agreements, if any. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template. The Funding Recipient may request in writing that the State grant permission to combine the Quarterly Progress Report required by this Paragraph with other reports required by this Project Partnership Agreement and the State may, at its sole discretion, approve such a request.
- c) Project Completion Report: Funding Recipient shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks associated with the Project. The Final Project Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project and three sets of as-built drawings. The Project Completion Report shall also include certification of final Project by a Registered Civil Engineer, consistent with Paragraph B.16. of this Project Partnership Agreement. Exhibit H provides further information regarding what the report is to contain.
- d) Project-Associated Work: The work plans and reports described in subparagraphs 20(a) through 20(d) above shall include information regarding any Project-Associated Work, which is work on projects that are associated with the work to be done under the Overall Work Plan but will not be funded under this Project Partnership Agreement. The State will determine the extent of the information required concerning Project-Associated Work on a case-by-case basis in consultation with the Funding Recipient.

- e) Flood Risk Resolution: Funding Recipient has acknowledged the current Level of Protection and flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities or counties and other agencies with flood management responsibilities located in the areas protected by their proposed projects. Funding Recipient has provided copies of the resolution or resolutions to the State. The Funding Recipient acknowledges that each resolution provides that any subsequent resolutions that would modify or rescind the resolution must be first approved by the State. Funding Recipient agrees that it shall provide any subsequent resolution for approval by the State no less than thirty (30) days before the resolution is acted upon by the governing body of the affected city or county or other agency with flood management responsibilities. State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.

21. RESERVED.

22. OPERATION AND MAINTENANCE. Funding Recipient agrees that it will execute an agreement with the Central Valley Flood Protection Board, or a successor thereto, substantially in the form of Exhibit D to this Project Partnership Agreement, which sets forth the obligations of the Funding Recipient to do the O&M work for the Project. Refusal of Funding Recipient to execute an O&M Agreement substantially in the form of Exhibit D or to do the O&M work in accordance with this Exhibit D may, at the option of State, be considered a breach of this Project Partnership Agreement and may be treated as default under Paragraph 18. Exhibit D is not required if the Funding Recipient has executed an OMR&R agreement with the Central Valley Flood Protection Board under the Flood Maintenance Assistance Program.

If the Funding Recipient is not currently the entity responsible for O&M of the associated federally authorized project, the Funding Recipient also represents and warrants:

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

In its sole discretion, the State may waive or modify the requirements of this Paragraph provided such waiver or modification is in writing and signed by the State's Program Manager designated in Paragraph 23 of this Project Partnership Agreement.

Funding Recipient and any other legal entity that has signed an agreement to Assume Responsibility for O&M must execute a legally binding agreement with the Central Valley Flood Protection Board that sets forth the Funding Recipient and other responsible legal entity's obligations to perform the O&M work for the Project not later than the point at which 25% of the Project funds have been extended; said requirement shall be a condition precedent as further defined in Paragraph 15.

Funding Recipient and any other legal entity that has signed an agreement to Assume Responsibility for O&M agrees to use its best efforts and given authorities to control all encroachments on project facilities to be repaired or otherwise modified under this Project Partnership Agreement and will use its best efforts and given authorities to not allow new encroachments on those facilities without approval of the Central Valley Flood Protection Board.

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

Upon 30 days written notice, State may enter the property and perform the necessary work either with State resources or by contract. The Funding Recipient or other legal entity as defined above will reimburse the State for the reasonable costs of performing the necessary work. Notwithstanding the ability of the State to enter the property and perform the necessary work under Paragraph 22, State may seek a court order requiring the Funding Recipient to perform its contractual obligations to do such work and/or pay Department's costs for doing such work.

23. PROGRAM AND PROJECT MANAGERS. Either party may change its Program or Project Manager upon written notice to the other party.

- a) State Program Manager: Shall be the Chief, Division of Flood Management, Department of Water Resources. State Program Manager shall be State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Project Partnership Agreement. The State Program Manager may delegate any task to the State Project Manager. Correspondence to the State Program Manager will be directed to:

Mr. David J. W. Wheeldon
FSRP Program Manager
Department of Water Resources
P.O. Box 219000
Sacramento, CA 95821-9000
(916) 574-1243
Dave.Wheeldon@water.ca.gov

- b) Funding Recipient's Program Manager: Funding Recipient's Program Manager shall be **Director, Water Resources Department**. Funding Recipient's Program Manager shall be the Agency's representative for the administration of the Project Partnership Agreement and shall have full authority to act on behalf of the Agency, including authority to execute all payment requests. The Funding Recipient's Program Manager may delegate tasks to the Funding Recipient's Project Manager. Correspondence to the Funding Recipient's Program Manager will be directed to:

Scott De Leon, Director
Lake County Watershed Protection District
255 N. Forbes Street
Lake Port, CA 95453
Phone: 707 263 2344
Email: Scott.DeLeon@lakecountyca.gov

24. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Project Partnership Agreement shall be in writing to Project Manager. Notices may be sent by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by electronic means followed by submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by U.S. mail will be deemed effective five (5) business days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent by electronic means will be effective on the date of successful transmission, which is documented in writing. Either party may, by written notice to the other, change its Program or Project Manager or designate a different address that shall be substituted for the one identified in Paragraph 23.

25. INCORPORATION OF EXHIBITS. This Project Partnership Agreement incorporates:

EXHIBIT A: OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE
EXHIBIT B: STANDARD CONDITIONS
EXHIBIT C: QUARTERLY WORK PLAN AND REPORT FORMATS
EXHIBIT D: RESERVED
EXHIBIT D-1: RESERVED
EXHIBIT D-2: RESERVED

EXHIBIT E: RESOLUTION ACCEPTING FUNDS TEMPLATE
EXHIBIT F: RESERVED
EXHIBIT G: EARLY PARTIAL RELEASE OF CERTAIN WITHHELD FUNDS
EXHIBIT H: PROJECT OR ELEMENT/FEATURE CLOSEOUT
EXHIBIT H-1: RESERVED
EXHIBIT I: STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING MATCH GUIDELINES
FOR FUNDING RECIPIENTS

26. RESERVED.

IN WITNESS WHEREOF, the parties hereto have executed this Project Partnership Agreement as of _____, 2023.

**State of California
Department of Water Resources**

By _____

Name Jeremy Arrich

Title Manager, Division of Flood Management

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name Robin E. Brewer

Title Asst. General Counsel

Date _____

Lake County Watershed Protection District

By _____

Name Scott De Leon

Title Director, NA 9

Date _____

Approved as to Legal Form
And Sufficiency

By  _____

Name Lloyd Guintivano

Title County Counsel

Date 02/15/2024

Exhibit A: OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE

Directions: Funding Recipient shall prepare an Overall Work Plan, Overall Project Budget, and Overall Project Schedule. In preparing these documents, if the Project has separable elements, Funding Recipient shall define the Project Elements and provide separate budgets and schedules for each Project Element. If any Project Element can be further divided into Project Features, Funding Recipient shall define the Project Features and provide separate budgets and schedules for each Project Feature. If implementation of the Overall Work Plan will be done in conjunction with Project-Associated Work, the Overall Work Plan should include information regarding the scope of the Project-Associated Work and a budget and schedule for this work in accordance with Paragraph 20(e) of the Project Partnership Agreement.

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

The Overall Work Plan should be organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE

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

Exhibit A

Article A-1: Overall Project Work Plan

Lake County Watershed Protection District (NA 9)

Levee Patrol Road Repair

Project Location

The proposed project is located in Lake County and the repair segments are located in north, north-east and south of city of Upper Lake.

Project Description

The proposed levee patrol road repair (Project) includes a total of 1.27 miles of full/partial rehabilitation of the deteriorated levee patrol road. The project proposes to fully rehabilitate the road surface by scarifying and re-compacting the upper six inches of the levee crown and overlaying the levee patrol road with four (4) inches of compacted Class 2 aggregate base rock (from ¾-in to 1-1/2-in size) and to partially rehabilitate the road surface by overlaying the levee patrol road with 4 inches of compacted Class 2 aggregate base rock (from ¾-in to 1-1/2-in size) and also rehabilitate a portion of damage levee slope by bringing it back to original position. Full or partial rehabilitation option will be determined by District Engineer at the time of construction based on field condition. District may modify the extent of repair to accommodate the cost within the contract amount.

Project Site

The Project includes rehabilitation along Unit 5 from Levee Mile (LM) 0.00 to LM 0.3 and from LM 0.54 to LM 1.02 of the Clover Creek Left Bank, another segment along Unit 2 from LM 2.55 to 3.04 of the Middle Creek Right Bank. See attached Levee Patrol Road Exhibit for repair areas.

Real Estate

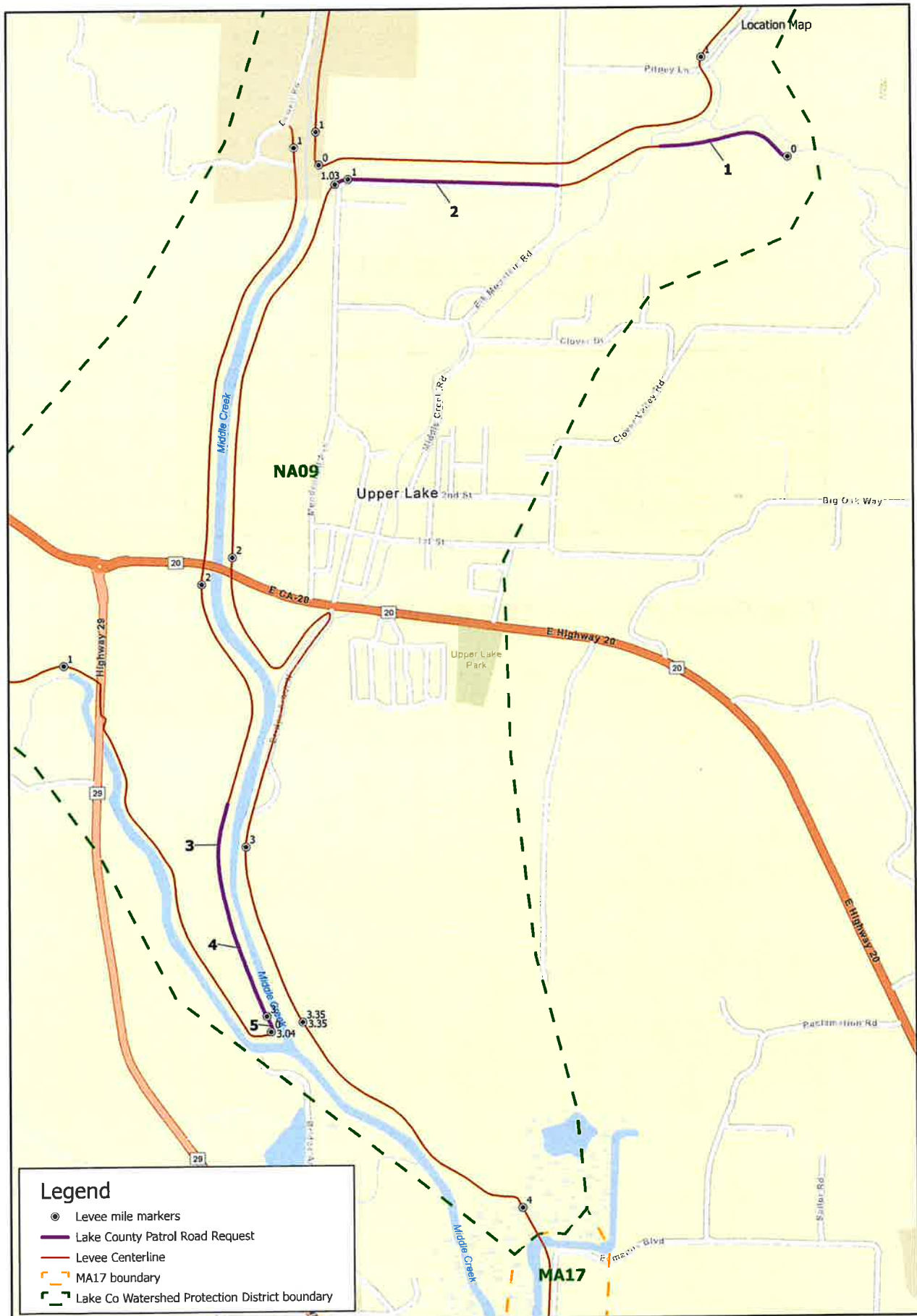
The Project will not require any new permanent real estate acquisition. It will need temporary easement for staging area during construction. The Staging and Construction Laydown area location will be determined and acquired by the contractor.

Environmental Permitting

The District will be responsible for obtaining environmental, regulatory permits (as applicable). However, it is anticipated that this project will be categorically exempt under the maintenance provision of CEQA.

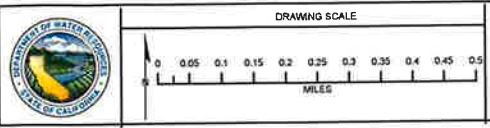
Hydraulic Considerations

The proposed levee repair project will not encroach into the channel geometry or affect the channel hydraulics.



Legend

- Levee mile markers
- Lake County Patrol Road Request
- Levee Centerline
- - - MA17 boundary
- - - Lake Co Watershed Protection District boundary



STATE OF CALIFORNIA
 THE RESOURCES AGENCY
 DEPARTMENT OF WATER RESOURCES
 DIVISION OF FLOOD MANAGEMENT
 FLOOD MAINTENANCE & OPERATIONS BRANCH
 FLOOD SYSTEM SUSTAINABILITY SECTION

**FLOOD SYSTEM REPAIR PROGRAM
 LAKE COUNTY WATERSHED
 PROTECTION DISTRICT
 PROPOSED PATROL
 ROAD REHABILITATION**

Article A-1-A. Overall Project Budget
NA 9 Levee Patrol Road Repair

Total Rehabilitation Cost	\$	227,082.00
Total Project Cost	\$	227,082.00
Local Cost-Share (15%)	\$	34,062.00
State Cost-Share (85%)	\$	193,020.00

Total Contract Amount \$193,020.00

Flood System Repair Project (FSRP)

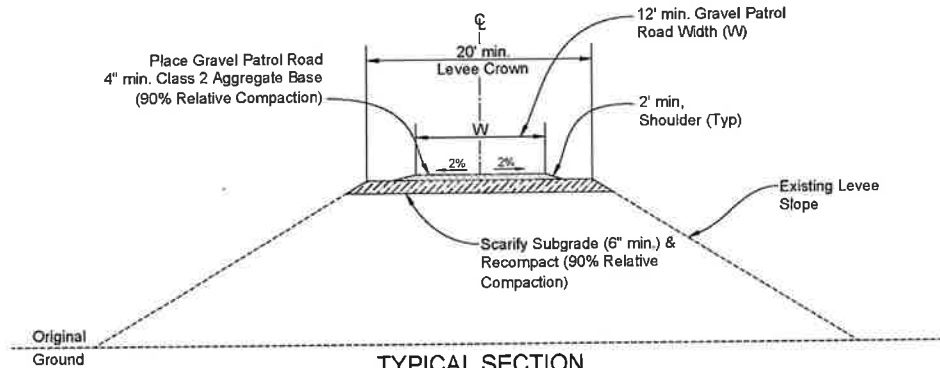
Levee Patrol Road Cost Estimate

General Information:

Local Maintaining Agency Name: Lake County Watershed Protection District Date: 12/5/2023
 Local Maintaining Agency ID: NA 9 FSRP Region: Upper Sacramento

Summary of Levee Crown and Patrol Roads Identified for Rehabilitation:

Site ID	Waterway (Bank)	Levee Unit	Assessed Levee Mile			Comments
			LM_start	LM_end	Length (Mi)	
1	Clover Creek	5	0.00	0.30	0.30	
2	Clover Creek	5	0.54	1.02	0.48	
3	Middle Creek	2	2.55	3.04	0.49	
					0.00	
					0.00	
					0.00	
Total length:					1.27	



**TYPICAL SECTION
 LEVEE PATROL ROAD REPAIR
 (FULL REHABILITATION OPTION)**

Pre-Feasibility Cost Estimate (Full Rehabilitation Option)

Item	Description	Quantity	Units	Unit Price	Amount	Comments
1	Embankment repair to levee slope	0.3	Mile	\$ 160,000.00	\$ 48,000.00	
2	Subgrade Preparation (scarify top 6" of soil and recompact to 90% relative compaction)	1.27	Mile	\$19,008.00	\$24,140	
3	4" Aggregate Base (Class 2 Aggregate Base 3/4" Max., at 90% relative compaction)	1.27	Mile	\$86,240.00	\$109,525	
Sub-Total:					\$ 181,665.00	
3	Engineering & Project Management			15%	\$27,250	
4	Contingency			10%	\$18,167	
Grand Total:					\$227,082	

Notes:

- A. All work shall comply with the specifications of Title 23, Article 8 "Standards", Section 120 "Levees", and Section 130 "Patrol Roads and Access Ramps", dated December 2009.
- B. Aggregate material shall be Class 2 Aggregate Base 3/4" or 1-1/2" maximum per current CalTrans standard specifications, Section 26-1.02B, dated 2018.
- C. Aggregate material for patrol road repairs shall meet a relative compaction for each layer of no less than 95% of the laboratory maximum density, per ASTM D 1557.
- D. Recycled, Salvaged, Volcanic, or Sedimentary rock will not be accepted.
- E. A sample of the aggregate material shall be submitted to the District Engineer for approval prior to importing to the project site.
- F. This estimate does not consider cost or permitting requirements associated with CEQA, the USACE, or Fish & Wildlife.
- G. This estimate does not consider costs associated with endangered species, wildlife conservation, archaeological or historical studies.

Exhibit B: STANDARD CONDITIONS

B.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- A. **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Project Partnership 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 Project Partnership 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 Project Partnership Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) calendar days of the expiration of the Project Partnership Agreement, whichever comes first.

B.2. **AMENDMENT:** This Project Partnership 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.

B.3. **AMERICANS WITH DISABILITIES ACT:** By signing this Project Partnership Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

B.4. **AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Project Partnership Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Project Partnership Agreement, and State may elect to pursue any remedies provided in Paragraph 18 or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.

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 Project Partnership Agreement with respect of all matters connected with this Project Partnership Agreement, including but not limited to, the cost of administering this Project Partnership Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.

B.5. **BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Project Partnership Agreement does not appropriate sufficient funds for this program, this Project Partnership Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Project Partnership Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Project Partnership Agreement and Funding Recipient shall not be obligated to perform any provisions of this Project Partnership Agreement. Nothing in this Project Partnership Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Project Partnership 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 Project Partnership Agreement with no

liability occurring to State, or offer a Project Partnership Agreement amendment to Funding Recipient to reflect the reduced amount.

- B.6. CEQA: Activities funded under this Project Partnership 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 18.
- B.7. 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.
- B.8. 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.
- B.9. 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 Project Partnership 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>.
- B.10. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Project Partnership Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- B.11. 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.
- B.12. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide throughout the term of this Project Partnership Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- B.13. 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.
- B.14. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this Project Partnership 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 Project Partnership 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.
- B.15. EASEMENTS: Where the Funding Recipient acquires property in fee title or funds improvements to real property using State funds provided through this Project Partnership Agreement, an appropriate easement or other title restriction providing for floodplain preservation and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

Where the Funding Recipient acquires an easement under this Agreement, the Funding Recipient agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to

another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner.

Failure to provide an easement or other title restriction acceptable to the State may result in termination of this Agreement.

- B.16. **FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER:** Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Project Partnership Agreement.
- B.17. **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 Overall Work Plan, and in accordance with the Budget, and Schedule (Exhibit A).
 - B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Project Partnership 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 Project Partnership 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 Project Partnership 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 Overall 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.
- B.18. **GOVERNING LAW:** This Project Partnership Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- B.19. **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.
- B.20. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Project Partnership Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- B.21. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Project Partnership Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under

- this Project Partnership Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Project Partnership Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.
- B.22. **INSPECTIONS OF PROJECT BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Project Partnership Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Project Partnership Agreement with State.
- B.23. **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>. For more information, please refer to DIR's *Public Works Manual* at: <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.
- B.24. **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 Exhibit A, which concern the budget and schedule without formally amending this Project Partnership 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 Project Partnership Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Project Partnership 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.
- B.25. **NONDISCRIMINATION:** During the performance of this Project Partnership 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/domestic partner status, gender identity, 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 Commission 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 Project Partnership Agreement.
- B.26. **OPINIONS AND DETERMINATIONS:** Where the terms of this Project Partnership Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- B.27. **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. (Civ. Code, § 9550, et seq.; Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- B.28. **PRIORITY HIRING CONSIDERATIONS:** If this Project Partnership Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions

funded by the Project Partnership Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

- B.29. **PROHIBITED TRANSACTIONS:** On March 4, 2022, the Governor issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. The EO may be found at: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. The EO directs the Department to terminate Project Partnership Agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine that the Funding Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State shall provide the Funding Recipient advance written notice of such termination, allowing the Funding Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.
- B.30. **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 Project Partnership Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- B.31. **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.
- B.32. **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.
- B.33. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Project Partnership Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- B.34. **RIGHTS IN DATA:** Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Project Partnership 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 Project Partnership Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- B.35. **SEVERABILITY:** Should any portion of this Project Partnership Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Project Partnership Agreement shall continue as modified.
- B.36. **SUSPENSION OF PAYMENTS:** This Project Partnership 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 Project Partnership Agreement.
- B.37. **SUCCESSORS AND ASSIGNS:** This Project Partnership Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Project Partnership Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient

- shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- B.38. 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.
- B.39. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 18(b), the State may terminate this Project Partnership Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Project Partnership Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 18.
- B.40. 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.
- B.41. TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Project Partnership Agreement. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources for excluded employees. These rates may be found at: <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- B.42. 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.
- B.43. TIMELINESS: Time is of the essence in this Project Partnership Agreement.
- B.44. UNION ORGANIZING: Funding Recipient, by signing this Project Partnership Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Project Partnership Agreement. Furthermore, Funding Recipient, by signing this Project Partnership Agreement, hereby certifies that:
- A. No State funds disbursed by this Project Partnership Agreement will be used to assist, promote, or deter union organizing.
 - B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Project Partnership Agreement to show those funds were allocated to that expenditure.
 - C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- B.45. 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.
- B.46. WAIVER OF RIGHTS: None of the provisions of this Project Partnership Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Project Partnership Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Project Partnership 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 C: QUARTERLY WORK PLAN AND REPORT FORMATS

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

QUARTERLY WORK PLANS

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

The report should reflect the work plan for completing work over the three months of the next calendar quarter.

QUARTERLY WORK PLAN

Describe the work to be performed during the period covered by the Quarterly Work Plan including:

PROJECT INFORMATION

- Engineering and construction matters.
- Environmental matters.
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies.
- Major accomplishments planned for the quarter (i.e., tasks to be completed, milestones to be met, meetings to be held or attended, etc.).
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter.
- Describe differences between the work to be performed and the work outlined in the Overall Work Plan, including anticipated change orders.
- Any litigation, proceedings or claims relating to the Project.

COST INFORMATION

- Listing showing projected costs that are anticipated during the period covered by the Quarterly Work Plan by the Funding Recipient and each contractor working on the project, broken down to show individual items and tasks.
- A discussion of how the projected costs compare to the project budget included in the Overall Work Plan.
- A list of any changes planned to the budget in accordance with Project Partnership Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan.
- The amount of advance funds sought from the State pursuant to Paragraph 12(b) of the Project Partnership Agreement.
- The amount of funds the Funding Recipient intends to expend to meet its funding obligations under the Project Partnership Agreement.

For projects that include eligible Real Estate Capital Outlay Costs and Real Estate Support Costs, such costs will be listed separately from other Eligible Project Costs in the discussion of Project costs. If the Project has multiple Project Elements or Project Features, the Quarterly Work Plan should clearly indicate which costs will be incurred for each Project Element or Project Feature.

SCHEDULE INFORMATION

- A schedule of activities during the period covered by the Quarterly Work Plan.

- A discussion on how the projected schedule compares to the original or last reported schedule.
- A list of any changes anticipated during the period covered by the Quarterly Work Plan as compared to the latest reported schedule.

QUARTERLY PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects contained in the Flood System Repair Program.

The report should reflect the status of all of the projects identified in the Project Partnership Agreement. A summary of program status should also be provided.

PROJECT STATUS

For each project, describe the work performed during the period covered by the report including:

PROJECT INFORMATION

- Legal matters.
- Engineering and construction matters.
- Environmental matters.
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies.
- Major accomplishments during the quarter (i.e., tasks completed, milestones met, meetings held or attended, press releases, etc.).
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter.
- Describe differences between the work performed and the work outlined in the Overall Work Plan, including change orders.
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project.

COST INFORMATION

- Listing showing costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the project and which of these costs are Eligible Project Costs.
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan as well as the Quarterly Work Plans.
- A list of any changes approved to the budget in accordance with Project Partnership Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan.
- A discussion of whether there have been any changes to the Funding Recipient's Finance Plan for payment of the Funding Recipient's share of Eligible Project Costs.
- Identify total interest earned on State funds paid as a result of this Project Partnership Agreement; and
- Identify the gross payments received from leasing property acquired as a result of the projects funded by this Project Partnership Agreement and identify the State share of such amount.

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

SCHEDULE INFORMATION

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

Exhibit D: RESERVED

(Note to Preparer: If the LMA does not have an executed OMRR&R Agreement with the CVFPB under FMAP, keep this section and delete "(OR) RESERVED" from the section title. However, if the LMA already has an executed OMRR&R Agreement with the CVFPB under FMAP, Exhibit D is not needed for this PPA. If Exhibit D is not needed, delete "OPERATION AND MAINTENANCE AGREEMENT (OR)" from the title and then collapse the section text by hovering your cursor over the title above until an arrow appears to the left of the text, then click the arrow to collapse the section.)

BETWEEN
The Central Valley Flood Protection Board
AND
Lake County Watershed Protection District
FOR
NA 9 Patrol Road Repair

This Operation and Maintenance Agreement ("O&M Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board") and the **Lake County Watershed Protection District** ("Funding Recipient") on this _____ day of _____, 2023 in view of the following circumstances:

1. The **NA 9 Patrol Road Repair** ("Project") is a project funded in part by the Flood System Repair Program and is a *(Note to Preparer: choose one:)* **modification, repair** of a part of the State-Federal Flood Control System known as *(Note to Preparer: for project in the San Joaquin River Basin using the following description:)* **the Lower San Joaquin River and Tributaries Flood Control Project** which was authorized by Congress on December 22, 1944 as part of Public Law 534 and was approved by the California Legislature in 1946 (Section 12651 of the State Water Code). *(Note to Preparer: for Projects in the Sacramento River Basin use the following description:)* **the Sacramento River Flood Control Project** which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.
2. State funding has become available for the Project:
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for the Flood System Repair Program ("FSRP").
 - The Funding Recipient has signed a Project Partnership Agreement. This Project Partnership Agreement is between the State of California Department of Water Resources and **Lake County Watershed Protection District** for **NA 9 Patrol Road Repair** ("Project Partnership Agreement").
 - The Project Partnership Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, according to the current Operation and Maintenance Manual(s) ("O&M") of Projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.
 - The Department has agreed to enter into the Project Partnership Agreement on the condition that the Funding Recipient enters into this O&M Agreement under which the Board will oversee O&M for the Project, as defined herein, for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Project at this time, but in anticipation that federal funds may become available eventually:
 - *(Note to Preparer: retain the following text if the Project Partnership Agreement contained a requirement that the Funding Recipient seek a federal contribution.)* **The Project Partnership Agreement requires the Funding Recipient to seek credit for the expenditures made under the Project**

Partnership Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.

- The parties agree that this O&M Agreement may be superseded by one or more agreements acceptable to the USACE, the Department, and the Board that gives satisfactory assurances to the federal government, the Department, and the Board that the required local cooperation will be furnished in connection with the Project.
4. Water Code section 12642 states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this O&M Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this O&M Agreement that Funding Recipient will be responsible for O&M of the Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages arising from construction or O&M of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this O&M Agreement, the terms below are defined as indicated:

"Board" means the State of California Central Valley Flood Protection Board or any successor thereto.

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

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

"Funding Recipient" means Lake County Watershed Protection District, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Project Partnership Agreement and this O&M Agreement.

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

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

"O&M Agreement" means this agreement between the Board and the Lake County Watershed Protection District for O&M of the Project.

"Overall Work Plan" means the plan described in the Project Partnership Agreement in Exhibit A-1.

(Note to Preparer: For Critical Repair projects which require O&M Plan revisions under Paragraph 22 or include project-specific modifications, include this definition:) **"Post Construction Performance Reports"** means the report(s) required by Project Partnership Agreement in Paragraph 20(d) and further described in Project Partnership Agreement Exhibit C.

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

"Project Partnership Agreement" means that certain agreement between the Department and the Lake County Watershed Protection District for NA 9 Patrol Road Repair dated _____, 2023.

“**Project Completion Report**” means the report required by Project Partnership Agreement Paragraph 20(c) and further described in Project Partnership Agreement Exhibit G.

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

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

“**State Plan of Flood Control**” means the state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in 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. The Funding Recipient hereby accepts responsibility for the Project.
2. To perform O&M for the Project, including all mitigation features of the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Funding Recipient to perform O&M for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
3. To indemnify the State, its representatives, officers, directors, employees and other persons acting in their capacity on behalf of the State, as well as the State's successors and assigns, against all claims, liabilities, charges, losses, expenses and costs including the State's attorneys' fees that may arise from any action or inaction of the State taken in conjunction with the Project except for any such expenses caused solely by the gross negligence or intentional acts of the State or its officers, agents and employees.
4. If the Funding Recipient has failed or refused to perform the obligations set forth in this O&M Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code section 12878 et seq.

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

5. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this O&M Agreement; and (ii) to perform any work required under other Sections of this Agreement on any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable

judgment of State the Funding Recipient fails to comply with its obligations under this O&M Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this O&M Agreement.

B. Specific Obligations Arising as a Result of the Project

1. If the Project Partnership Agreement requires the Funding Recipient to develop an Interim Standard Operation and Maintenance Manual, Funding Recipient shall:
 - (a) develop an Interim Standard Operation and Maintenance Manual as so required; and
 - (b) be responsible for O&M of the Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Project and any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Project and (2) shall annually update the Interim Operation and Maintenance Manual for the Project prepared pursuant to the Project Partnership Agreement. The Funding Recipient acknowledges that changes to the Interim Standard Operation and Maintenance Manual may be made by the State and the USACE before the document becomes final and that the Funding Recipient shall be responsible for O&M in accordance with any revised version of the Operation and Maintenance Manual for the Project or any Supplement to the Operation and Maintenance Manual.
2. If the Project Partnership Agreement requires the Funding Recipient to develop a Safety Plan, Funding Recipient shall:
 - (a) develop a Safety Plan as so required.
 - (b) annually update the safety plan for the Project prepared pursuant to the Project Partnership Agreement.
 - (c) use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.
3. The Funding Recipient shall provide reports to the Board as follows: (1) The Funding Recipient shall provide copies to the Board of the Project Completion Report and Post Construction Performance Reports prepared pursuant to the Project Partnership Agreement; and (2) If requested to do so by the Board, the Funding Recipient shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Stats. 2007, ch. 366) (Wat. Code, § 9140(a)) that pertain to the Project. The Board may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities under this O&M Agreement.

SECTION II: Hazardous Substances

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

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.

- B. That in the event hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this O&M Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate and maintain the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of Section II of the Project O&M Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

The Funding Recipient may delegate or subcontract its responsibilities under this O&M Agreement. In performing the obligations called for in this O&M Agreement, the Funding Recipient shall notify the State when it delegates a majority of its obligations under this Agreement by retaining, employing, or using any agencies or firms. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this O&M Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

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

SECTION IV: Procedures for Reimbursing the State

To the extent Funding Recipient fails to fulfill its obligations under this Agreement, as provided in Section I-A-4, the State may perform such obligations and bill Funding Recipient accordingly. In such circumstances, the State shall provide an invoice to the Funding Recipient for the costs of performing the work. Funding Recipient agrees to reimburse the State by promptly paying any such invoices within thirty days.

SECTION V: Disputes

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

SECTION VI: Obligation of Future Appropriations

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

SECTION VII: Term of Agreement; Amendment

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

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

SECTION VIII: Notices

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

If to **Lake County Watershed Protection District**:

(Note to Preparer: Edit the bold red text below with the Funding Recipient's contact information and change the font color to black. Then delete this note to the preparer and return to the first page of this template document for further instructions.)

Funding Recipient Name, Title
Address Line 1
Address Line 2

If to the Board:

Mr. Christopher Lief
Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 151
Sacramento, CA 95821

With a copy to:

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

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

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

SECTION IX: Standard Conditions

This O&M Agreement incorporates by reference the standard conditions that are included in Attachment D-1 to this O&M Agreement.

SECTION X: Authority

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

(Remainder of page intentionally left blank)

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

**Central Valley
Flood Protection Board**

By _____

Name Christopher Lief

Title Executive Officer

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name Jit Dua

Title Legal Counsel

Date _____

Lake County Watershed Protection District

By _____

Name _____

Title _____

Date _____

Approved as to Legal Form
And Sufficiency

By _____

Name _____

Title _____

Date _____

Exhibit D-1: RESERVED

(Note to Preparer: If the LMA does not have an executed OMRR&R Agreement with the CVFPB under FMAP, keep this section and delete "(OR) RESERVED" from the section title. However, if the LMA already has an executed OMRR&R Agreement with the CVFPB under FMAP, Exhibit D-1 is not needed for this PPA. If Exhibit D-1 is not needed, delete "STANDARD CONDITIONS (OR)" from the title and then collapse the section text by hovering your cursor over the title above until an arrow appears to the left of the text, then click the arrow to collapse the section.)

1. **GOVERNING LAW:** This O&M Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this O&M Agreement.
3. **AMENDMENT:** This O&M Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This O&M Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this O&M Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this O&M Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this O&M Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this O&M Agreement, and State may take any other action it deems necessary to protect its interests, after complying with Paragraph V of the O&M Agreement.
6. **NO THIRD PARTY RIGHTS:** The Parties to this O&M Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this O&M Agreement, or of any duty, covenant, obligation or undertaking established herein.
7. **OPINIONS AND DETERMINATIONS:** Where the terms of this O&M Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
8. **SUIT ON O&M AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this O&M Agreement.
9. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this O&M Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
10. **SEVERABILITY:** Should any portion of this O&M Agreement be determined to be void or unenforceable, such shall be severed from the whole and the O&M Agreement shall continue as modified.
11. **WAIVER OF RIGHTS:** None of the provisions of this O&M Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this O&M Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the O&M Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

12. **TERMINATION FOR CAUSE:** The State may terminate this O&M Agreement should Funding Recipient fail to perform the requirements of this O&M Agreement at the time and in the manner herein provided or in the event of a default under Paragraph 18 of the Project Partnership Agreement.
13. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the O&M Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
14. **CONFLICT OF INTEREST**
 - a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) **Former State Employees:** For the two-year period from the date, he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date, he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c) **Employees of the Funding Recipient:** Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act (Gov. Code, § 87100 et seq.)
 - d) **Employees of and Consultants to the Funding Recipient:** Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

Exhibit D-2: RESERVED

(Note to Preparer: If the LMA does not have an executed OMRR&R Agreement with the CVFPB under FMAP, keep this section and delete "(OR) RESERVED" from the section title. However, if the LMA already has an executed OMRR&R Agreement, Exhibit D-2 is not needed so you can delete "RESOLUTION ACCEPTING STANDARD CONDITIONS (OR)" from the title and then collapse the section by hovering your cursor over the title above until an arrow appears to the left of the text, then click the arrow to collapse the section.)

Resolution No. _____

Resolved by the _____ of the **Lake County Watershed Protection District**
(Governing Body, Board, Agency, or Other)

that pursuant and subject to all of the terms and provisions of the Flood System Repair Program Guidelines, that funds awarded to **Lake County Watershed Protection District** by the California Department of Water Resources for a State-Federal Flood Control System modification/repair project titled: **NA 9 Patrol Road Repair** 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 **Lake County Watershed Protection District** to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of **NA 9 Patrol Road Repair**.

Therefore, the _____, or designee of the **Lake County Watershed Protection District**
(Title of Authorized LMA Representative)

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

Passed and adopted at a regular meeting of the _____
(Governing Body, Board, Agency, or Other)
of the **Lake County Watershed Protection District**

on _____
(Date)

Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary Signature _____

Printed Name _____

Exhibit E: RESOLUTION ACCEPTING FUNDS TEMPLATE

Resolution No. _____

Resolved by the _____ of the **Lake County Watershed Protection District**
(Governing Body, Board, Agency, or Other)

that pursuant and subject to all of the terms and provisions of the Flood System Repair Program, that the funds awarded to **Lake County Watershed Protection District** by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: **NA 9 Patrol Road Repair** are hereby accepted.

The _____, or designee of **Lake County Watershed Protection District**
(Title of Authorized LMA Representative)

is hereby authorized and directed to sign a Project Partnership Agreement and any amendment thereof with the California Department of Water Resources and to sign requests for disbursements to be made under this Project Partnership Agreement.

The _____, or designee of **Lake County Watershed Protection District**
(Title of Authorized LMA Representative)

is hereby authorized and directed to submit any required documents, invoices, and reports required by the Project Partnership Agreement.

Passed and adopted at a regular meeting of the _____
(Governing Body, Board, Agency, or Other)

of the **Lake County Watershed Protection District** on _____
(Date)

Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary Signature _____

Printed Name _____

Exhibit F: RESERVED

(Note to Preparer: For Critical Repair Agreements with Land Acquisition, retain Exhibit F text and delete '(OR) RESERVED' from the title. For Patrol Road Agreements or Critical Repair Agreements with no Land Acquisition, delete 'LAND ACQUISITION PROCESS REQUIREMENTS (OR)' from the title then collapse the rest of the section by hovering your cursor over the Exhibit F title until an arrow appears to the left of the text, then click the arrow to collapse the section.)

- 1) **GEODETIC STANDARDS:** Funding Recipient shall provide geodetic services as described in this Exhibit. Geodetic services are defined as field surveys, examination of title to all parcels, preparation of legal descriptions, maps and deeds including obtaining preliminary title reports, or litigation guarantees, clearance of exceptions to title, and policy of title insurance.

Funding Recipient shall acquire and assume title of the real property rights in Funding Recipient's name for all parcels authorized in accordance with the approved Project Real Estate Plan using Grant Deed or Easement Deed as directed by the State, in a form consistent with a sample to be provided by the State. The State shall have sole discretion to determine whether the real estate rights are acquired in the form of a Grant Deed or Easement Deed.

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

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

Funding Recipient shall assure that property vested by Funding Recipient, and subsequently conveyed to State, is free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes, except:

- Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
- Covenants, conditions, restrictions, and reservations of record, or contained in the above-referenced document.
- Easements or rights of way over said land for public or quasi-public utility or public purposes not in conflict with the Project, if any.

State shall provide Funding Recipient with copies of the geodetic branch-cadastral surveys guidelines, standards, and requirements for legal descriptions and mapping in an Exhibits Binder.

State shall verify Funding Recipient's adherence to geodetic standards during the review process and provide approval or rejection to Funding Recipient in writing.

- 2) **APPRAISAL STANDARDS:** An appraisal estimates the fair market value of the real property acquired. All appraisals shall be performed by an appraiser who is licensed with the State of California, Office of Real Estate Appraisers and who also holds the designation of MAI or a recognized equivalent applicable to the type of property appraised. An appraisal of the current fair market value as defined in Code of Civil Procedure section 1263.320 must be developed as required by the Uniform Standards of Professional Practice Standard 1: Real Property Appraisal Development and reported as a Self-Contained Appraisal Report under USPAP Standard 2: Real Property Appraisal Reporting. Appraisal Standards shall be those contained in the most recent edition of The Appraisal of Real Property, which is published by the

Appraisal Institute. Three copies of each appraisal report shall be submitted to the State for approval, including, if necessary, the Department of General Services.

Appraisals reports with just compensation values up to \$150,000 will be reviewed and approved by State. For acquisitions where the individual appraisal report's just compensation value exceeds \$150,000, the appraisal will require review and approval from the Department of General Services. State shall provide Funding Recipient with Appraisal Standards and Specifications and Department of General Services Appraisal Review Specifications as depicted in an Exhibits Binder.

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

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

Funding Recipient shall comply with State's, Water Resources Engineering Memorandum No. 59 (WREM 59), which establishes a policy for pre-acquisition inspection of real property and improvements where the State is anticipating to be conveyed, by assignment, a real property interest, fee or easements, for ascertaining the existence of hazardous substances. At a minimum for all fee purchases and all levee right of way, Funding Recipient shall conduct a Phase I Environmental Site Assessment (ESA) and prepare a written report in conformance with the scope and limitations of the American Society for Testing and Materials (ASTM) E1527-05 standard practice and the requirements set forth in Title 40, Part 312 of the Code of Federal Regulations (CFR). The contents of the Phase I ESA report shall be based on information from the following, but not limited to the following activities: a site reconnaissance, historical review of land use, review of land title records, consultation with local environmental health officials, contact with the landowner, review of available maps and records, review of cultural resource databases, and review of federal and State environmental databases.

The Funding Recipient will obtain necessary permits from the current landowners to allow inspection of the property. In the event that the Funding Recipient discovers through an environmental investigation, such as a Phase I ESA or other means prior to or after close of escrow that any Project lands contain hazardous substances or toxic materials, the Funding Recipient shall either forgo the purchase of the property or initiate and complete any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Account Act or other applicable law and sustain all costs accordingly. Any required remediation plan shall be approved by the State before the State advances any funds into escrow under Paragraph 19(b) of this Agreement. The Funding Recipient shall be considered the Project proponent, bona fide prospective purchaser, operator, and/or landowner for purposes of CERCLA, RCRA, Hazardous Substances Account Act, other applicable law and WREM 59 liability.

Funding Recipient shall acquire the real property rights free and clear of all known encumbrances and hazardous substances based on, when reasonably necessary, the analytical laboratory results of composite sediment and soil samples. Funding Recipient shall determine and have reviewed and approved by the agencies with regulatory jurisdiction the proper disposition of identified encumbrances to title.

If the areas of acquisition are to be used as borrow sites, Funding Recipient shall determine that the soil found in these areas is suitable as fill material in accordance with guidelines found in the California Environmental Protection Agency, Department of Toxic Substances Control document entitled "Information Advisory — Clean Imported Fill Material" dated October 2001.

State shall provide Funding Recipient with Environmental Site Assessment Standards and Guidelines in an Exhibits Binder.

State shall verify Funding Recipient's adherence to Environmental Site Assessment Standards during the review process and provide approval or rejection to Funding Recipient in writing.

- 4) **WRITTEN OFFER:** Purchase documents, known collectively as the first written offer, is comprised of a cover letter to the property owner and a right of way contract (purchase agreement) in a form consistent with a sample depicted an Exhibits Binder provided by the State, including an appraisal summary statement of the appraisal's fair market value and geodetic materials (map and deed). The offer package shall also include information on the Relocation Assistance Plan if it is applicable.

Funding Recipient shall provide State for review and approval purposes, the subject property's right of way contract (purchase agreement), appraisal report, geodetic materials (map and deed), and environmental site assessment report. State's review shall be accomplished, and the results reported to Funding Recipient promptly following receipt of those documents.

Funding Recipient's geodetic materials (map and deed) shall be reviewed by State for compliance to the Early Implementation Projects, Cadastral Surveys Guidelines, and requirements for legal descriptions and mapping.

Funding Recipient's environmental site assessment report will be reviewed for compliance to a Phase I Environmental Site Assessment (ESA) and prepare a written report in conformance with the scope and limitations of the American Society for Testing and Materials (ASTM) E1527-05 standard practice and the requirements set forth in Title 40, Part 312 of the Code of Federal Regulations (CFR). This standard is in accordance with the State's Water Resources Memorandum No. 59 (WREM 59), which establishes a policy for pre-acquisition inspection of real property and improvements where the State is anticipating to be conveyed, by assignment, a real property interest, fee or easements, for ascertaining the existence of hazardous substances.

Funding Recipient is at risk of not receiving cost-sharing for land acquisition activities made before receiving State's approvals as detailed in Sections 1) Geodetic Standards, 2.) Appraisal Standards, and 3.) Environmental Site Assessment Standards, of this Exhibit F.

- 5) **NEGOTIATIONS:** Funding Recipient's negotiator is responsible to ensure that the property owner is paid the just compensation that they are entitled, that the settlement represents compensation that is just and fair, and that every courtesy and consideration is extended to the property owner. If during the course of negotiations, the negotiator discovers anything affecting the value for the property that may have escaped the appraiser's attention or was not given proper consideration in the final determination of market value, the negotiator must investigate and, if necessary, call for a reappraisal of the property before negotiations are continued.

Parcel diaries for each ownership must be maintained. The parcel diary will reflect the offer and status of the agent's contracts and conversations with all interested parties. It will remain with the agent individual parcel folder until the parcel is acquired. It will then be included in the memorandum of settlement package.

Private property or interest therein will be acquired in accordance with Article I, Section 19 of the California Constitution. In addition to the constitutional requirement, acquisition of private property for public use is also to be in accordance with sections of the Government Code entitled "Uniform Relocation Assistance and Real Property Acquisitions Policies Act."

Negotiated settlement, situations where final just compensation is to be paid to a property owner, must be approved by State in writing. Property may be acquired through negotiated settlement at a payment which varies from the approved appraisal through the negotiated settlement process. If the negotiated settlement is non-substantial and can be justified through the appraisal process, it may be authorized by State's Real Estate Branch. Negotiated settlements of a substantial amount or those that cannot be justified through the appraisal process, will require prior approval by State's Program Management personnel in concurrence with the State's Real Estate Branch, Chief.

Funding Recipient is at risk of not receiving cost-sharing for offers made that are in excess of the approved appraisal's fair market value without receiving the State's approvals as detailed in Sections 1)

Geodetic Standards, 2.) Appraisal Standards, and 3.) Environmental Site Assessment Standards, of this Exhibit F.

- 6) **MEMORANDUM OF SETTLEMENT:** Funding Recipient shall provide State a memorandum of settlement package (MOS), in a form consistent with the sample depicted in the Exhibits Binder provided by the State. State will review and approve each transaction before the close of escrow. The settlement package shall include a copy of the original signed and notarized deed on deposit in the escrow account, two signed copies of the Right of Way Contract each with original signature(s), a "Memorandum of Settlement, Escrow and Closing Instruction Worksheet" which gives instructions for clearing title at close of escrow, escrow closure notice, escrow and closing cover letter, and a copy of the parcel diary.

The final settlement will be given careful consideration to compensation of appraised fair market value, compliance with existing policy on title exceptions, and adequacy of the property acquired as it relates to the Project Real Estate Plan.

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

Final transactions will be reviewed and approved by State.

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

- 7) **ESCROW AND CLOSING:** Escrow and closing services are required to consummate the transactions which are called for in the Project Partnership Agreement including funding, clearing title at close of escrow, and issuance of a policy of title insurance.

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

Funding Recipient will select an escrow holder of its choice to facilitate escrow. Escrow holder shall be instructed by State as to funding, clearing title at close of escrow, and issuance of a policy of title insurance.

Funding Recipient's escrow holder shall close escrow in accordance with previously approved "Escrow and Closing Instruction Worksheet" outlined in Section.6), Memorandum of Settlement, of this Exhibit F, which gives instructions for the proper disposition of identified encumbrances to title and the escrow closure notice.

Funding Recipient is solely responsible for providing funding for its share of Eligible Project Costs into escrow.

Closing shall be accomplished through the Escrow upon which the deed will be recorded in the official public records of the county in which the real property is located. Title shall be conveyed to Funding Recipient at close of escrow.

The costs of using an escrow agent will be paid by the Funding Recipient but will be considered Eligible Project Costs for purposes of this Project Partnership Agreement and hence subject to state cost sharing requirements.

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

- 8) **LAND ACQUISITION FINAL ACCOUNTING PROCESS:** At the conclusion of the Project or any Project Elements, Funding Recipient shall prepare and provide State with a land acquisition final accounting package as described below. The land acquisition final accounting package serves multiple purposes for the State, including allowing tracking of parcels, ensuring only Eligible Project Costs are paid, facilitating legally required accounting and audit functions, and maximizing the State's ability to obtain crediting towards future possible federal cost shares. Accordingly, strict adherence to preparation of the land acquisition final accounting package is required.

As detailed in Paragraph 19(a) of the Project Partnership Agreement, Funding Recipient will submit to State a Project Real Estate Plan, to establish acceptable Project Real Estate requirements. Depending upon the disbursement approach selected by Funding Recipient in Paragraph 19(b) of the Project Partnership Agreement, State may provide Funding Recipient advanced funds to be counted toward the State cost share of total Project costs for approved acquisitions of necessary Project lands, easements, and rights-of-way. Payment to Funding Recipient for any lands, easements, or rights of way purchased, and relocations made prior to execution of the Agreement, and/or prior to final determination by State of the extent of necessary real estate requirements for the Project, is subject to adjustment during the final accounting of costs shared between State and Funding Recipient.

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

Funding Recipient shall submit for State's approval a land acquisition final accounting package. The land acquisition final accounting package will serve as the final review and approval of Funding Recipient's authorized land acquisition costs, which may be applied towards Eligible Project Costs. A land acquisition final accounting package will be provided for each individual real property acquisition necessary for the project construction. Land acquisition final accounting packages will conform to State's format and will include all documents requested by State.

Land acquisition final accounting package will include, but is not limited to: Binder Coversheet and Spine format; Exhibit A, Funding Recipient Parcel No., Central Valley Flood Protection Board Parcel No., APN, Property Owner, Acreage per Project Real Estate Plan, Acreage Acquired; Exhibit B, acquisition breakdown of capital outlay costs; Authorization Letters (Authorization of Project Real Estate Plan Letter, Land Acquisition Standards Approval Form, Memorandum of Settlement Approval Form); Checklist including acreage variance; Right of Way Contract (Purchase Agreement); Appraisal; Acquisition deed; Acquisition maps; Utility Relocation Agreements, if applicable; Preliminary Title Report; Policy of Title Insurance; Escrow and Closing Settlement Statement; and Memorandum of Settlement Statement. The final land acquisition accounting package shall include a certification by the Funding Recipient's Program Manager that all costs and records are true and correct.

Exhibit G: EARLY PARTIAL RELEASE OF CERTAIN WITHHELD FUNDS

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

A. Funds Eligible for Early Partial Release

Several provisions of the Project Partnership Agreement authorize withholding.

- Paragraph 12(b) provides for advance payment of construction-related costs and the amount withheld is 10% of each advance payment.
- Paragraph 19(b) provides for disbursements for Real Estate Capital Outlay Costs and the amount withheld depends upon what disbursement option is selected by Funding Recipient.
- Paragraph 19(c) provides for disbursements for Relocation Assistance Costs and the amount withheld for advance payments for such expenses is 25%.
- Paragraph 15 is the general withholding provision which provides for withholding of 10% from all payments, other than payments subject to the withholding rules set forth above.

The State will only consider requests for early partial release of funds that are being withheld pursuant to Paragraph 15. Although Real Estate Support Costs are withheld pursuant to Paragraph 15, the State will not grant requests for partial release of funds which are being withheld to cover the State's share of Real Estate Support Costs. The State also will not grant requests for early partial release of funds withheld under Paragraphs 19(b) and 19(c), which provide for withholding for Real Estate Capital Outlay Costs and Relocation Assistance Costs.

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

1. **Timing:** The Funding Recipient may make a request for partial release of withheld funds for a Project Feature, Project Element, or Project. The State will only consider a request for early partial release for withheld funds if the Funding Recipient has made substantial progress towards completion and expects to complete work on the Project Feature, Project Element, or Project no later than 6 months after the date the request is made.
2. **Substantial Progress Toward Closeout:** The State will only consider a request if for the Project Feature, Project Element, or Project the Funding Recipient: (1) has provided an O&M Manual and Project Construction Completion Report in accordance with Exhibit H, Sections II.A and II.B; and (2) has made significant progress toward providing the required land acquisition final accounting packages required for completion of the land acquisition closeout process specified in Exhibit H, Section II.C.
3. **Amount Withheld:** The State will consider requests for the release of withheld funds at the completion of identified project phases.

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

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

1. Granting the request is in the best interests of the State because the withheld funds are needed for further work on the Project, or
2. Granting the request will not adversely affect the State because: (a) the Project has been substantially completed, (b) the amount of the withheld funds is significantly more than an updated estimate of State's share of Eligible Project Costs required to complete the project, and (c) early partial release is not

expected to materially affect the willingness of the Funding Recipient to fulfill its remaining obligations under the Project Partnership Agreement.

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

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

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

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

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

Exhibit H: PROJECT OR ELEMENT/FEATURE CLOSEOUT

I. GENERAL

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

II. PROJECT CLOSEOUT

The Project Partnership Agreement Paragraphs applying to Project closeout are 13(f), 19(f), 20(c), B.16. and Exhibit F. Below is an outline of the Project closeout documents required, and their timelines, in order to close out the Project or Project Elements or Features.

- A. Interim O&M Manual (120 days prior to completion of the first Project Element. Time extension may be requested and will be considered on an individual basis.)
- B. Project Construction Completion Report - (within 90 calendar days of completion of all construction tasks. Time extension may be requested and will be considered on an individual basis.)
 - 1. Purpose and description of the Project
 - a. Actual work done
 - b. Schedule (actual vs. proposed)
 - c. Final documents
 - (i) Environmental documents (CEQA/NEPA), permits, and agreements
 - (ii) Budget discussion (Project cost summary) – The Final Statement of Costs will contain more detailed information
 - (iii) Project Partnership Agreement and Amendments
 - (iv) Final technical report (QA/QC, survey, etc.)
 - d. Reports/studies generated/utilized during the Project (hydrologic etc.)
 - e. As-built/record drawings – (3 sets hardcopy and 1 electronic format - .pdf on cd)
 - f. Photo documentation
 - (i) Pre-construction
 - (ii) Construction
 - (iii) Post-construction
 - g. Civil engineer certification of Project
 - (i) Certification by a California Registered Civil Engineer that the pre- and post-project Levels of Protection are consistent with the agreed upon scope of work.

- (ii) Separate sheet contained within the report with certification by a California Registered Civil Engineer that the Project was constructed in accordance with the approved work plan and any approved modifications thereto.
 - h. Division of Engineering (“DOE”) inspection report
 - (i) Provide proof of submittal of Project Completion Report to DOE for review and approval.
 - (ii) Provide memo from DOE stating that the Project has been completed to the State’s satisfaction.
- 2. Preliminary Statement of Costs
 - a. Complete account of invoices/costs from Funding Recipient. A list of and copies of all invoices showing:
 - (i) The date each invoice was submitted to State.
 - (ii) The amount of the invoice.
 - (iii) The date the check was received.
 - (iv) The amount of the check. (If a check has not been received for the final invoice, then state this in this section).
 - b. List of all project invoices (final funds disbursement) on CD Including:
 - (i) Labor cost of personnel of agency/major consultant/sub-consultants.
 - (ii) Personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc.
 - (iii) Construction cost information, shown by material, equipment, labor costs, and change orders.
 - (iv) A statement verifying separate accounting of Project disbursements.
 - (v) Breakdown of costs into Project management, design, environmental, construction, construction management, real estate, lease payments, relocation assistance, etc.
 - c. Summary of Project cost including:
 - (i) Accounting of the cost of Project expenditures.
 - (ii) All internal and external costs not previously disclosed.
 - (iii) A discussion of factors that positively or negatively affected the Project cost and any deviation from the original Project cost estimate.
 - d. If the Funding Recipient is requesting a lump sum payment for the State’s share of remaining costs associated with the first three years of environmental mitigation and monitoring required by permits or by CEQA or NEPA that are expected to be Eligible Project Costs, a good faith estimate of the remaining costs and substantiation for the estimate.
 - e. Total interest due to State from advances

3. Application for seeking Federal credit

A copy of the application filed for a determination of eligibility for federal credits or reimbursement and all correspondence with USACE relating to that application and information regarding the status of that application.
 4. O&M Agreement (fully executed)
 5. Project Associated Work Report (if required because some segments are constructed with the Project but not funded by the FSRP)
- C. Real Estate Project Close Documents
1. Land Acquisition Final Accounting Package reviewed and approved
 2. Final conveyance documents accepted and recorded
- D. Final Statement of Costs (submitted within 60 days of when real estate project close-out documents are complete.)
1. Updated version of Preliminary Statement of Costs provided pursuant to Section II.B.2 above.
 2. If the Funding Recipient has received an increased cost share for the Supplemental Benefits objectives of habitat, open-space, recreation, or a combination thereof, a summary of the payments made by the Funding Recipient and any adjustments made in accordance with the process set forth in Exhibit H-1.

Exhibit H-1: RESERVED

(Note to Preparer: For Critical Repair Agreements with Supplemental Benefits (i.e., which claim an increased State cost-share for contributions to the habitat, open-space, recreation, or combination objectives), retain Exhibit H-1 text and delete '(OR) RESERVED' from the title. For Patrol Road Agreements or Critical Repair Agreements without Supplemental Benefits, delete 'ACCOUNTING FOR CONTRIBUTIONS TOWARD CERTAIN SUPPLEMENTAL BENEFITS (OR)' from the title then collapse the rest of the section by hovering your cursor over the Exhibit H-1 title until an arrow appears to the left of the text, then click the arrow to collapse the section.)

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

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

The Funding Recipient has indicated that it will make contributions in excess of the [5%*] threshold for contributions toward the habitat, open-space, recreation, or combination objectives. Specifically, the [5%] threshold for the Project is _____ *(Note to Preparer: insert dollar amount for [5%*] of Total Project Costs)* and the Funding Recipient has indicated that contributions will be made toward the attainment of the *(Note to Preparer: insert name of objective - i.e. habitat, open-space, recreation, or combination)* objectives in the amount indicated: _____ *(Note to Preparer: Insert dollar amounts for contribution Funding Recipient indicated it would make as part of the Cost-Share Recommendation and Report submitted with the Application in order to qualify for an increased cost-share for providing a Supplemental Benefit.)*

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

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

- For contributions of less than 5%, the State's cost share percentage shall be determined based upon no contribution and shall be ___% *(Note to Preparer: insert State's cost-sharing percentage)*.

- For contributions of 5% or more and less than 10%, the State' cost share percentage shall be determined based upon a 5% contribution and shall be ___ % *(Note to Preparer: insert State's cost-sharing percentage)*.
- For contributions of 10% or more and less than 15%, the State' cost share percentage shall be determined based upon a 10% contribution and shall be ___ % *(Note to Preparer: insert State's cost-sharing percentage)*.
- For contributions of 15% or more and less than 20%, the State' cost share percentage shall be determined based upon a 15% contribution and shall be ___ % *(Note to Preparer: insert State's cost-sharing percentage)*.
- For contributions of 20% or more, the State' cost share percentage shall be determined based upon a 20% contribution and shall be ___ % *(Note to Preparer: insert State's cost-sharing percentage)*.

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

If a Funding Recipient fails to provide the Supplemental Benefits it agreed to complete in exchange for a higher State cost share under Paragraph 8, and the Funding Recipient refuses to return any excess payment, the State may withhold funds from future scheduled payments to the Funding Recipient, consistent with Paragraphs 16 and 17 of this Agreement, and take other appropriate actions.

*(*Note: This Exhibit assumes that the Funding Recipient has indicated that it will make a contribution to only one objective and only for an amount that exceeds the 5% threshold. If the Funding Recipient intends to make a contribution which exceeds the 10%, 15%, or 20% thresholds, the wording of this Exhibit shall be modified accordingly. To the degree that the State's cost share percentage is based on State Transportation Facilities or State Water Supply Facilities, then the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives would not be available due to the 70% cap on the State cost share percentage attainable by Supplemental Benefits. Similarly, the 90% (or 95% for economically disadvantaged areas) cap on the State cost share percentage may limit the availability of the higher percentages (e.g., 15% or 20%) for the habitat, recreation, open-space, and combination objectives.)*

Exhibit I: STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING MATCH GUIDELINES FOR FUNDING RECIPIENTS

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. List of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event of this Project Partnership 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 Project Partnership Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans, or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

Contracts:

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

Invoices:

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

Funding Match Documentation

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

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