

**STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES**

**Agreement Number: 2017-DMP-LCWPD-01**

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

**LAKE COUNTY WATERSHED PROTECTION DISTRICT (LCWPD)**

**FOR**

**DMP-2017-LCWPD-01**

**FUNDED UNDER THE**

**DEFERRED MAINTENANCE PROJECT**

**OF**

**CONTROL SECTION 6.10 OF THE BUDGET ACT OF 2016**

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**STATE OF CALIFORNIA**  
**THE RESOURCES AGENCY**  
**DEPARTMENT OF WATER RESOURCES**  
**PROJECT AGREEMENT BETWEEN STATE OF CALIFORNIA**  
**DEPARTMENT OF WATER RESOURCES AND**  
**LAKE COUNTY WATERSHED PROTECTION DISTRICT (LCWPD)**  
**UNDER CONTROL SECTION 6.10 OF THE BUDGET ACT OF 2016**  
**(Public Resources Code Sections 5096.800 et seq.)**

THIS PROJECT AGREEMENT, entered into by and between the State of California, acting by and through the Department of Water Resources, herein referred to as the "State" and the **Lake County Watershed Protection District (LCWPD)**, 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 Agreement.

**"Assurance Agreement"** means the form of agreement between the Central Valley Flood Protection Board and Funding Recipient for the provision of assurances to the CVPB regarding the assumption of OMRR&R for the Project by Funding Recipient attached hereto as Exhibit D. Execution of the Assurance Agreement is a prerequisite to Phase II funding.

**"Credit"** means Funding Recipient expenditures toward Eligible Project Costs incurred prior to execution of a Project Agreement that are recognized by the State.

**"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 6, to the extent to which they are to be counted toward the Project Agreement 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 this Project Agreement, and its successors and assigns.

**"Implementation Procedures"** means the procedures for the Deferred Maintenance Project (DMP) which govern (i) the process by which Department reviews and selects DMP repair projects to fund, and (ii) 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"** means routine vegetation management, rodent control, sediment removal and mechanical service.

**"Maintenance Costs"** means the costs of OMRR&R.

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

**"OMRR&R"** means operation, maintenance, repair, rehabilitation and replacement of the Project, Project Element(s) or Project Feature(s).

**"Operations"** means labor, facilities, inspections, and emergency response activities.

**"Overall Work Plan"** means the plan described in Paragraph 22(a) and Exhibit A-1.

**"Post Construction Performance Reports"** means the reports required by Paragraph 22(e) and further provided in the Assurance Agreement.

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

**"Phase I"** means the inspection(s) or evaluation(s) of pipes within SPFC facilities as further described in the Overall Work Plan developed for this Project Agreement and attached hereto as Exhibit A.

**"Phase II"** means the pipe repair, rehabilitation, replacement or removal work approved by Department following completion of Phase I as further described in the Overall Work Plan developed for this Project Agreement and attached hereto as Exhibit A, as the same may be amended from time to time.

**"Project"** means the project, including Phase I and Phase II, described in the Overall Work Plan.

**"Project Completion Report"** means the report required by Paragraph 22(d) and further described in Exhibit H.

**"Project Costs"** means the total cost of a Project, including Eligible Project Costs.

**"Project Element" or "Element"** means a discrete portion of a Project identified as such in the Overall Work Plan (e.g. a pipe or group of pipes to be repaired or replaced and identified as a "project element" 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 as such 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 22(c) and further described in Exhibit C.

**"Quarterly Work Plans"** means the reports required by Paragraph 22(b) and further described in Exhibit C.

**"Rehabilitation"** means to restore a Project, Project Element or Project Feature by way of minor or major repairs.

**"Repair"** means to fix or mend a Project, Project Element or Project Feature.

**"Replacement"** means replacement of Project, Project Element or Project Feature at end of life or after catastrophic failure.

**"State"** means the State of California, acting by and through the Department of Water Resources.

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

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

**"Statement of Costs"** means a statement of incurred costs submitted pursuant to Paragraph 15.

**"Project Agreement 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 Project Agreement 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 the Deferred Maintenance Project more specifically described in the Overall Work Plan pursuant to Control Section 6.10 of the Budget Act of 2016. Funds may be used only as provided in this Project Agreement for Eligible Project Costs for the Project described in the Overall Work Plan. Funding under this Project Agreement will be provided in two Phases. Phase I funds will be made available upon the execution of this agreement and satisfaction of applicable prerequisites described elsewhere in this Project Agreement. Phase II funds will be made available for pipes located on SPFC facilities and only upon (i) completion of Phase I, (ii) review and approval of all Phase I work by DWR, and (iii) satisfaction of applicable prerequisites described elsewhere in this Project Agreement, including (a) execution of an amendment to this Project Agreement describing Phase II costs and (b) execution of an Assurance Agreement between Funding Recipient and the CVFPB. Funding for all Phases is contingent on funding being made available to Department in accordance with Control Section 6.10 of the Budget Act of 2016.
2. **TERM OF PROJECT AGREEMENT.** The term of the Project Agreement shall be from the latest date of execution by the Department of Water Resources and approval by the Department of General Services through **December 31, 2021** or when all Funding Recipient and Department obligations under this Project Agreement are fully satisfied, whichever comes first.

3. **PROJECT SCHEDULE.** Funding Recipient shall diligently perform or cause to be performed all project work in accordance with the Project Schedule as shown in Exhibit A-1-B or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Exhibit A-1-B, the State reserves the right to withhold funds as provided in Paragraphs 17-19 of this Agreement.
4. **ESTIMATED PROJECT COST.** The reasonable cost of Phase I of the Project is estimated to be **\$40,000.00**. The Reasonable cost of Phase II of the Project will be determined prior to initiation of Phase II. If State determines funding is available for Phase II and the Parties agree to proceed with Phase II, this agreement may require amendment.
5. **LIMIT ON STATE FUNDS.** Pursuant to Section 6.10 of the Budget Act of 2016 and subject to the availability of funds, including any mandates from the Department of Finance, the Pooled Money Investment Board ("PMIB") or any other State authority, the State will provide to Funding Recipient in accordance with the terms of this Project Agreement funding in the amount not to exceed **\$40,000.00**, except as provided in Paragraph 29. The State will not make payments of any kind – advances or reimbursements – until funding is made available by the State Treasurer, after allocation decisions are made by the PMIB and Department of Finance. Funding recipients will only be entitled to State funds for Eligible Project Costs, as defined in Paragraph 6, and the funding provisions in Paragraph 7. The State may, without requiring an Amendment to this Project Agreement, increase or decrease this amount only as provided for in Paragraph 29.
6. **ELIGIBLE PROJECT COSTS.** Funding Recipient shall only apply State funds for Eligible Project Costs. Except as otherwise provided in Paragraph 14(b), Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after the LMA has passed the resolution accepting the funds Exhibit E, and returned the signed Project Agreement to DWR. The Implementation Procedures provide a summary of the costs which are considered eligible or non-eligible project costs.
7. **COST SHARING BY THE STATE AND FUNDING RECIPIENT.** The State will pay one hundred percent (100%) of Eligible Project Costs for each Phase. Funding Recipient will be responsible for all costs that are not Eligible Project Costs.
8. **RESERVED.**
9. **FUNDING RECIPIENT'S RESPONSIBILITY FOR WORK.** Funding Recipient shall be responsible for work and for persons or entities engaged in work, including subcontractors, suppliers, and providers of services. Funding Recipient shall give personal supervision to any work required under this Project Agreement or employ a competent representative, satisfactory to State, with the authority to act for Funding Recipient. Funding Recipient or its authorized representative shall be present while work is in progress. Funding Recipient shall give attention to fulfillment of the Project Agreement and completion of the Project, and shall keep work under control. Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project to bid disputes and payment disputes with Funding Recipient's contractors and subcontractors. State will not mediate disputes between Funding Recipient and any other entity concerning responsibility for performance of work.
10. **RELATIONSHIP OF PARTIES.** Upon execution of this Project Agreement, Funding Recipient agrees that it is acting in an independent capacity and is solely responsible for design, construction, and (except as otherwise provided by Paragraph 24 if applicable) OMRR&R of the Project, Project Element(s) and Project Feature(s) constructed, repaired, rehabilitated or replaced with funds provided under this Project Agreement. Review or approval of plans, specifications, Project Real Estate Plan, bid documents or other construction documents, and construction inspection by the State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict Funding Recipient's responsibility.

Preliminary documents provided by the State as part of the Notice of Eligibility or Project Agreement negotiations, including the Pre-Feasibility Cost Estimate Report, and any communication provided by the State regarding those documents, are provided solely for the purpose of defining the Overall Work Plan as provided in Attachment A and shall not be deemed to relieve or restrict Funding Recipient's responsibility for design, construction, and OMRR&R. The Funding Recipient's costs for the technical review of, and for assisting State in the development of, the Overall Work Plan and supporting documents, shall be considered Eligible Project Costs contingent upon State's acceptance of those costs as reasonable and execution of this Project Agreement.

11. PERFORMANCE AND ASSURANCES. Funding Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications under this Project Agreement and to apply State funds received only to Eligible Project Costs and to OMRR&R in accordance with applicable provisions of the law.
12. REQUIREMENTS FOR DISBURSEMENT. Funding Recipient shall meet all conditions precedent, defined in subparagraphs a – f below, before State shall be obligated to disburse any funds pursuant to this Project Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Project Agreement. State shall have no obligation to disburse money under this Project Agreement unless and until the disbursement is in accordance with requirements of the Control Section 6.10 of the Budget Act of 2016. The following are conditions precedent to funding for Phases I and II unless otherwise noted:
  - a) Funding Recipient has executed this Project Agreement and provided a copy of a resolution duly adopted by its governing body accepting the Funds, and designating an authorized representative to execute this Project Agreement and to sign requests for disbursement of State funds. The resolution must be substantially the same as the draft resolution provided in Exhibit E to this Project Agreement.
  - b) Funding Recipient has executed an Assurance Agreement by and between Funding Recipient and the Central Valley Flood Protection in substantially the form attached hereto as Exhibit D as provided for in Paragraph 24 of this Project Agreement. This condition must be satisfied prior to disbursement of any funds for Phase II.
  - c) Funding Recipient has demonstrated compliance with (i) all applicable requirements of CEQA and NEPA and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, Project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements.

In addition to the requirement that the Funding Recipient demonstrate completion of all required environmental documents, the Department may not issue the approval letter required for combined design and construction projects under Paragraph 13 of this agreement until Funding Recipient has completed its environmental work and issued a notice of decision in connection with the Project Element, Project Feature or Project for which the approval letter has been requested.

- d) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports as required by Paragraph 22.
- e) The necessary funding has been made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and the Department of Finance, as discussed above in Paragraph 5.



- f) All Phase I work shall be completed by Funding Recipient and reviewed, and accepted by the State prior to the performance of Phase II work or funding of Phase II work by Department.

13. **ADVANCE WORK APPROVALS BY STATE.** At least forty-five days prior to awarding a construction contract or initiating construction, whichever is earlier, for any Project, Project Element, or Project Feature, Funding Recipient shall submit to State engineering plans and specifications certified by a California Registered Civil Engineer as to compliance with the approved Project as defined in Paragraph 22. 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 22. No disbursement of funds for the work described in a Quarterly Work Plan will be made until the State has approved the Quarterly Work Plan.

If the Overall Work Plan includes design and construction work, such work may be completed in phases. The Funding Recipient may begin design work before its environmental documents are complete, but may not begin the construction portion of the approved Project until all environmental work for the Project Element or Project Feature has concluded. An Overall Work Plan that contains both design and construction work has an additional, mid-Project, State approval requirement; when the project work transitions from design to construction, the Department must confirm, in writing, that the Project is eligible to move forward into construction. In circumstances where one particular Project Element or Project Feature is ready to begin construction, this approval letter may be issued, but only for the Project Element(s) or Project Feature(s) that are ready. An additional approval letter will be required from the Department for each subsequent Project Element or Project Feature. As described further in Paragraph 12(c) of this agreement, this approval letter may not be issued if the Funding Recipient has not completed all necessary environmental work for the Project Element or Project Feature.

14. **PAYMENTS AND CREDITS FOR ELIGIBLE PROJECT COSTS.** Eligible Project Costs will be paid or credited by the State in accordance with the provisions in Paragraph 7 and according to one or more of the following methods:

- a) For all Eligible Project Costs, work will be divided into two categories: non-construction and construction. Though prior written approval is strongly advised any time a Local Agency anticipates it will request credit, the Department will consider, on a case-by-case basis, crediting non-construction work performed without prior written approval. In contrast, the Department must have issued prior written approval for actual construction work to be deemed creditable and any conditions described in the written approval must be met before the credit is afforded. The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction of the DMP repair project as defined in the Overall Work Plan. The Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 15. The Statement of Costs shall be submitted within 45 days of the effective date of this Project Agreement.
- 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 22, State shall pay in advance on a quarterly basis for approved Eligible Project Costs (excluding Real Estate Capital Outlay Costs of the work covered in the Quarterly Work Plans submitted. Funding Recipient shall provide Statements of Costs in accordance with Paragraph 15. If

State determines that advances in that quarter exceed actual costs in that same quarter, such amounts may be applied against advances in succeeding quarters.

If State determines that advances exceed the State's share of total actual Eligible Project Costs, State may withhold advance payments equal to amounts advanced in excess of the State's share of Eligible Project Costs, but only after Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Project Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of 10 percent (10%). This withholding will be held until the required Statements of Costs are provided, at which point the detailed expenditures will be adjusted accordingly. The expenditure calculation shall be subject to withholding in accordance with Paragraph 17.

15. 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 particular statement. Each Statement of Costs shall also include: (1) information required to verify that claimed costs were incurred, such as contractor and vendor invoices and receipts for equipment and supplies; (2) a statement of Funding Recipient's payments made to cover its share of Eligible Project Costs, if applicable; and (3) a comparison of the actual incurred Eligible Project Costs with those projected in the Quarterly Work Plans and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Work Plan budget.
  - b) 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; (2) it is submitted under signature of a person other than Funding Recipient's Program or Project Manager; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 15(g). State will notify Funding Recipient of any Statement of Costs so rejected, and the reasons therefore.
  - 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 Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Project Agreement; or (3) are not supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). State and Funding Recipient shall then attempt to negotiate a resolution of the claim and adjust the Statement of Costs accordingly. Funding Recipient may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. If the claim remains disputed, it may be resolved in accordance with the dispute resolution process set forth in Paragraph 20. If Funding Recipient fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending Statement of Costs by

the amount of the ineligible and/or unapproved cost(s). The requirements for close-out of a Project, Element, or Feature are provided in Exhibit H. A Project, Project Element, or Project Feature will be considered completed when the Funding Recipient has provided the information specified in Exhibit H to the satisfaction of the State.

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

- f) All Statements of Costs shall be accompanied by a statement signed by the Funding Recipient's Program or Project Manager that the statement is correct to the best of his or her knowledge and belief after a reasonable investigation. The signed statement shall be submitted under penalty of perjury.
  - 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 or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements. If the State opts to modify the requirements, it shall notify Funding Recipient in writing of the change(s).
16. **DISBURSEMENT.** Following the review of each invoice, State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes and to provisions as specified in this Project Agreement. Notwithstanding any other provision of this Project Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on State bonds, pursuant to any federal statute or regulation. Any and all money disbursed to Funding Recipient under this Project Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.
17. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed for Real Estate Capital Outlay Costs and Eligible Project Costs quarterly advances, the State shall withhold five percent (5%) of the State share until the Project Element of the Project for which the payment is made is completed or, if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed and, with respect to Phase II work, the Funding Recipient has executed an Assurance Agreement between the Central Valley Flood Protection Board and the Funding Recipient (Exhibit D). A Project, Project Element, or Project Feature shall not be considered completed until the requirements of Exhibit H have been met to the satisfaction of the State. Among these requirements are: (1) the work on such Project, Project Element, or Project Feature has been completed to the State's satisfaction; (2) a Final Statement of Costs has been submitted for Eligible Project Costs for the Project, Project Element, or Project Feature; (3) as-built drawings satisfactory to the State have been submitted to the State; and (4) for a Project, Project Element, or Project Feature, Funding Recipient provides a certification of a Registered Civil Engineer that that portion of the Project has been built in compliance with the plans approved by the State pursuant to Paragraph 13.

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

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

18. **WITHHOLDING THE BALANCE OF FUNDING AMOUNT.** Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release the balance of the funds withheld pursuant to Paragraph 17 (other than requests for early release of funds made by the Funding Recipient pursuant to Exhibit G), that portion that has been disbursed shall be repaid within 60 days with interest at the California general obligation bond interest rate with interest beginning to accrue at the time the State notifies the Funding Recipient of its decision. Refusal of Funding Recipient to repay within 60 days may, at the option of State, be considered a material breach of this Agreement and treated as default under Paragraph 20.
19. **WITHHOLDING THE ENTIRE FUNDING AMOUNT.** If State notifies Funding Recipient of its decision to withhold the entire funding amount pursuant to Paragraph 17, this Project Agreement shall terminate and the State shall no longer be required to provide funds under this Project Agreement.
20. **DEFAULT PROVISIONS AND DISPUTE RESOLUTION.**

- a) Events of Default. Funding Recipient will be in default under this Project Agreement if any of the following occur:
- 1) Material breach of this Project Agreement, including any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
  - 2) Making any false warranty, representation, or statement with respect to this Project Agreement or the application filed to obtain this Project Agreement; or
  - 3) Failure to make any remittance required by this Project Agreement.
- b) Consequences of Default. Should an event of default occur, State shall provide a notice of default to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, which shall be no less than 10 days from the notice of default, State may do any or all of the following:
- 1) Cancel the Project Agreement.
  - 2) Complete the Project using its own resources.
  - 3) Contract with the current or any other contractor to complete the Project.
  - 4) Require that the Funding Recipient return all or a portion of state funds, with interest at the State Surplus Money Investment Fund rate at the time of default, accruing from the date the funds were provided.
- c) Dispute Resolution.

Any claim that Funding Recipient may have regarding the performance of this Project Agreement, including but not limited to claims for an extension of time, shall be submitted in writing to the Program Manager at the Department of Water Resources, within thirty (30) calendar days of Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a good faith resolution of such claim and process an Amendment to the Project Agreement to implement the terms of any such resolution, if deemed necessary by the parties.

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

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

21. RESERVED.

22. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.

- a) Overall Work Plans: The forms of Overall Work Plan, Budget, and Schedule for the Project are included as Exhibit A to this Project Agreement.
- b) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Project Agreement. Within seven (7) days of the effective date of this Project Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Project Agreement and the end of that calendar quarter and then quarterly thereafter. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days before the work covered by the plan is scheduled to begin. Exhibit C, Quarterly Work Plan and Report Formats, provides an example template for the Quarterly Work Plan.
- c) Quarterly Progress Reports: Funding Recipient shall submit progress reports on the status of the Project to State. Progress reports shall be filed quarterly. No later than 60 days after the time period covered by a Quarterly Work Plan, the Funding Recipient shall submit a Quarterly Progress Report for the time period covered by the Quarterly Work Plan. The submittal and approval of these reports is a requirement for continued disbursement of State funds. Quarterly Progress reports shall summarize the work completed during the reporting period, include a statement of construction progress compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project. The reports shall include total interest earned to date on State funds, and any lease credits due to the State from lease agreements, if any. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template. The Funding Recipient may request in writing that the State grant permission to combine the Quarterly Progress Report required by this paragraph with other reports required by this Project Agreement and the State may, at its sole discretion, approve such a request.
- d) Project Completion Report: Funding Recipient shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks associated with the Project. The Final Project Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project and three sets of as-built drawings. The Project Completion Report shall also include certification of final Project by a Registered Civil Engineer, consistent with Exhibit B, Paragraph B-8 of this Project Agreement. Exhibit H, provides further information regarding what the report is to contain.
- e) Reserved

f) Reserved.

g) Compliance with Executive Order S-02-07: At the sole discretion of the State, the State may modify the requirements for preparation and submittal of work plans and reports called for in this Project Agreement in order to improve administration of the DMP or ensure compliance with the Governor's Executive Order on accountability for bond funds, Executive Order S-02-07, or other legal requirements.

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

23. RESERVED.

24. OPERATION, MAINTENANCE, REPAIR, REHABILITATION AND REPLACEMENT (PHASE II ONLY). All provisions of this section 24 will apply if Phase II work is to be undertaken by Funding Recipient. If no Phase II work is to be undertaken by Funding recipient this section shall have no force or effect. Prior to requesting funds for Phase II work, Funding Recipient agrees that it will execute an Assurance Agreement with the Central Valley Flood Protection Board, or a successor thereto, in substantially the form of Exhibit D to this Project Agreement, which sets forth the obligations of the Funding Recipient to do the OMRR&R work for Phase II of the Project. Phase II funding is contingent upon execution of an Assurance Agreement by Funding Recipient. Refusal of Funding Recipient to execute an Assurance Agreement in substantially the form of Exhibit D prior to requesting funding for Phase II, or failure to do the OMRR&R work in accordance with the Assurance Agreement may, at the option of State, be considered a breach of this Project Agreement and may be treated as default under Paragraph 20.

If the Funding Recipient is not currently the entity responsible for OMRR&R of the associated federally authorized project, the Funding Recipient may, with the prior written approval of Department, satisfy the requirement to execute an Assurance Agreement by providing to Department evidence satisfactory to the Department that the entity(ies) currently responsible for OMRR&R of the associated federally authorized project has executed an Assurance Agreement for Phase II work in substantially the form of Exhibit D of this Project Agreement. Department's decision to accept satisfaction of the Assurance Agreement requirement of this Project Agreement by a local agency(ies) other than Funding Recipient shall be made in Department's sole discretion and shall be based upon, among other things, demonstration that such local agency(ies) have satisfactorily performed existing OMRR&R duties.

25. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Funding Recipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Project Agreement, including those necessary to perform design, construction, or OMRR&R for the Project. Funding Recipient shall be responsible for observing and complying with all applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including environmental, procurement and safety laws, rules, regulations, and ordinances. Upon request by State, Funding Recipient shall provide copies of permits and approvals.

Without limiting the foregoing, Funding Recipient will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor

(California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done and funded pursuant to this agreement, including any payments to the Department of Industrial Relations under Labor Code Section 1771.3.

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

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

**Mr. Mark R. List**  
**DMP Program Manager**  
**Department of Water Resources**  
**P.O. Box 219000**  
**Sacramento, CA 95821-9000**  
**(916) 574-1243**  
**Mark.List@water.ca.gov**

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

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

27. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Project Agreement shall be in writing to Project Manager. Notices may be sent by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by electronic means followed by submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by U.S. mail will be deemed effective five (5) business days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent by electronic means will be effective on the date of successful transmission, which is documented in writing. Either party may, by written notice to the other, change its Program or Project Manager or designate a different address that shall be substituted for the one identified in Paragraph 26.

28. INCORPORATION OF EXHIBITS. This Project 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, Operation and Maintenance Agreement  
Exhibit D-1, Standard Conditions  
Exhibit, D-2 Resolution Accepting Standard Conditions Template

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

29. **MODIFICATION OF OVERALL WORK PLAN.** After the Project Agreement is executed, Department will consider approving or requiring changes to the work plan due to circumstances that were not reasonably foreseeable at the time the Project Agreement was executed. Department will allow non-material changes to be made to the work plan without formally amending the Project Agreement. Non-material changes include:

- Changes to the design plans if, at the sole discretion of Department, Department determines changes will improve the project design and will not result in a budget revision or an increase in the overall schedule beyond the term of the Project Agreement.
- Changes to portions of the work plan concerning budget that would not result in an increase to the state's funding commitment, as explained below.
- Changes to the work plan's project schedule that do not extend the term of the Project Agreement.

If, at Department's direction, changes in the scope of the work plan require an increase in funding, Department may authorize the use of up to 10 percent of any contingency fund without amending the Project Agreement.

If the Funding Recipient and the State agree to a material change with respect to the Overall Work Plan that decreases the Project cost there shall be proportionate reduction in the maximum amount payable by the State.

If a change to the cost-sharing formula causes the overall state share of the Project cost to increase or decrease then the parties must amend the Project Agreement which will be subject to approval by the Department of General Services.

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

30. Reserved.

31. Reserved.

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



IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of \_\_\_\_\_, 20

**State of California**  
**Department of Water Resources**

By \_\_\_\_\_

Name Eric Koch

Title Chief, Division of Flood Management

Date \_\_\_\_\_

Approved as to Legal Form  
And Sufficiency

By \_\_\_\_\_

Name Robin E. Brewer

Title Asst. Chief Counsel

Date \_\_\_\_\_

**Lake County Watershed Protection District**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Approved as to Legal Form  
And Sufficiency

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Exhibit A  
OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE

The Overall Work Plan is organized as follows:

ARTICLE A-1. OVERALL PROJECT WORK PLAN

ARTICLE A-1-A. OVERALL PROJECT BUDGET

ARTICLE A-1-B. OVERALL PROJECT SCHEDULE