

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
(DEPARTMENT OF WATER RESOURCES) AND  
CITY OF MERCED  
AGREEMENT NUMBER 4600015139**

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the City of Merced, a charter city in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

1. **PURPOSE.** State shall provide funding from the Budget Act of 2022 (Stats. 2022, ch. 249, § 207.) to Funding Recipient to assist in financing the Merced Creek Restoration Project (Project).
2. **TERM OF FUNDING AGREEMENT.** The term of this Funding Agreement begins on the date this Funding Agreement is initially executed by the State, through Final Project Completion Report plus three (3) years unless otherwise terminated or amended as provided in this Agreement.
3. **FUNDING AMOUNT.** The maximum amount payable by the State under this Agreement shall not exceed \$6,000,000.
4. **DISBURSEMENT OF FUNDS.** State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations. Any and all money disbursed to Funding Recipient under this Funding Agreement shall be used solely to pay Eligible Project Costs.
5. **ELIGIBLE PROJECT COST.** Funding Recipient shall apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law and Exhibit B. Eligible Project Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Reimbursable administrative expenses are the necessary costs incidental but directly related to the Project included in this Agreement. Costs that are not eligible for reimbursement or payment include but are not limited to the following items:
  - A. Purchase of equipment not an integral part of the Project.
  - B. Purchase of water supply not an integral part of the Project.
  - C. Replacement of existing funding sources for ongoing programs.
  - D. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of the Project, as set forth and detailed by engineering and feasibility studies.
  - E. Costs incurred as part of any necessary response and cleanup activities required under the Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Hazardous Substances Account Act; or other applicable law.
6. **METHOD OF PAYMENT.** State will disburse the whole of State funding to Funding Recipient. The Funding Recipient shall submit one or more certified invoices, transmitted via electronic/digital signature system (e.g., DocuSign) or, via U.S. mail or Express mail delivery of a "wet signature." State will notify Funding Recipient, in a timely manner, whenever, upon review of the Invoice(s), State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to State. Funding Recipient shall, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies).

Invoices submitted by Funding Recipient shall include the following information:

- A. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
- B. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for the Project during the period identified in the particular invoice for the implementation of the Project.
- C. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
  - i. Invoices must contain the date of the invoice and the time period covered by the invoice.
  - ii. Invoices must be itemized based on the categories (i.e., tasks) specified in Exhibit B. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
  - iii. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
  - iv. Each invoice shall clearly delineate those costs incurred during that time period.
  - v. Each invoice shall contain the signature and date via electronic/digital signature system (e.g., DocuSign) of Funding Recipient's Project Representative. The invoice shall be certified and transmitted via electronic/digital signature system (e.g., DocuSign) or, via U.S. mail or Express mail delivery to the State's Project Manager.

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

7. DEFAULT PROVISIONS. Funding Recipient will be in default under this Funding Agreement if any of the following occur:
- A. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
  - B. Making any false warranty, representation, or statement with respect to this Funding Agreement;
  - C. Failure to operate or maintain Project in accordance with this Funding Agreement.
  - D. Failure to make any remittance required by this Funding Agreement, including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.
  - E. Failure to submit timely progress reports.
  - F. Failure to routinely invoice State.
  - G. Failure to meet any of the requirements set forth in Paragraph 8, "Continuing Eligibility."

Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten (10) calendar days to cure the default from the date the notice is sent

via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:

- a. Declare the funding be immediately repaid at the time of the default.
- b. Terminate the Funding Agreement.
- c. Take any other action that it deems necessary to protect its interests.

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

8. CONTINUING ELIGIBILITY. Funding Recipient shall meet the following ongoing requirements (as applicable) to remain eligible to receive State funds:
- A. An urban water supplier that receives state funds pursuant to this Agreement shall maintain compliance with the Urban Water Management Planning Act (UWMP; Water Code, § 10610 et seq.) and Sustainable Water Use and Demand Reduction (Water Code, § 10608 et seq.).
  - B. An agricultural water supplier receiving state funds shall comply with Sustainable Water Use and Demand Reduction requirements outlined in Water Code § 10608, et seq. and have their Agricultural Water Management Plan (AWMP) deemed consistent by DWR.
  - C. A surface water diverter receiving state funds shall maintain compliance with diversion reporting requirements as outlined in Part 5.1 of Division 2 of the Water Code.
  - D. Funding Recipient shall maintain continuing eligibility with the current Sustainable Groundwater Management Act (SGMA, Water Code §10720 et seq.) requirements as they come into effect.
  - E. If Funding Recipient is designated as a monitoring entity under the California Statewide Groundwater Elevation Monitoring (CASGEM) Program, Funding Recipient shall maintain reporting compliance, as required by Water Code §10932 and the CASGEM Program.
  - F. Funding Recipient shall adhere to the protocols developed pursuant to The Open and Transparent Water Data Act (Water. Code, § 12405, et seq.) for data sharing, transparency, documentation, and quality control.
  - G. 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 DWR to terminate funding 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.
9. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted via DWR's "Grants Review and Tracking System" (GRanTS) or via e-mail. If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F. The timely submittal of reports is a requirement for initial and continued disbursement of State funds.

- A. Annual Progress Reports: Funding Recipient shall submit Annual Progress Reports to meet the State's requirement for disbursement of funds. Annual Progress Reports shall be uploaded via GRanTS, and the State's Project Manager notified of upload, or or via e-mail to the State's Project Manager. Annual Progress Reports shall, at a minimum, provide a brief description of the work performed, Funding Recipients activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Annual Progress Report should be submitted to the State no later than one year after the execution of the Agreement with future reports then due on successive year increments based on the first Annual Progress Report submittal date, with the exception of the final Annual Progress Report which may also serve as the Project Completion Report and can extend beyond a year-long increment to account for Project closeout information.
  - B. Project Completion Report: Funding Recipient shall prepare and submit to State a Project Completion Report, either separately or as part of the final Annual Progress Report. Funding Recipient shall submit the Project Completion Report within ninety (90) calendar days of Project completion. The Project Completion Report shall include, in part, a description of actual work done, any changes or amendments to the Project, and a final schedule showing actual progress versus planned progress, and copies of any final documents or reports generated or utilized during the Project.
10. NOTIFICATION OF STATE. Funding Recipient shall promptly notify State, in writing, of the following items:
- A. Events or proposed changes that could affect the scope, budget, or work performed under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.
  - B. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.
  - C. The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.
11. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing.
- A. Notices may be transmitted by any of the following means:
    - i. By delivery in person.
    - ii. By certified U.S. mail, return receipt requested, postage prepaid.
    - iii. By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
    - iv. By electronic means.
  - B. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

12. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Funding Agreement are as follows:

Department of Water Resources

Arthur Hinojosa

Manager, Division of Regional Assistance

P.O. Box 942836

Sacramento, CA 94236-0001

Phone: 916-902-6713

Email: [Arthur.Hinojosa@water.ca.gov](mailto:Arthur.Hinojosa@water.ca.gov)

City of Merced

Scott McBride

City Manager

678 W. 18<sup>th</sup> St.

Merced, CA 95340

(209) 388-8670

[McbrideS@cityofmerced.org](mailto:McbrideS@cityofmerced.org)

Direct all inquiries to the Project Manager:

Department of Water Resources

Ted Daum

Division of Regional Assistance

P.O. Box 942836

Sacramento, CA 94236-0001

Phone: (916) 902-7800

e-mail: [Theodore.Daum@water.ca.gov](mailto:Theodore.Daum@water.ca.gov)

City of Merced

Scott McBride

City Manager

678 W. 18<sup>th</sup> St.

Merced, CA 95340

(209) 388-8670

[McbrideS@cityofmerced.org](mailto:McbrideS@cityofmerced.org)

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

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

Exhibit A – Work Plan

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Authorizing Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – State Audit Document Requirements for Funding Recipients

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

City of Merced

\_\_\_\_\_  
Arthur Hinojosa  
Manager, Division of Regional Assistance  
Date \_\_\_\_\_

\_\_\_\_\_  
Scott McBride  
City Manager  
Date \_\_\_\_\_

Approved as to Legal Form and Sufficiency

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
Robin Brewer, Assistant General Counsel  
Office of the General Counsel  
Date \_\_\_\_\_

  
\_\_\_\_\_  
Craig Cornwell  
City Attorney  
Date 2/8/2024

## **EXHIBIT A WORK PLAN**

**PROJECT:** Bear Creek Restoration

**IMPLEMENTING AGENCY:** City of Merced

**PROJECT DESCRIPTION:** The project is for activities related to the construction, mitigation and restoration of approximately 6 miles of Bear Creek within the City of Merced. The Project consists of the removal of trash, pollution, and invasive plant overgrowth; introduction of native plant species for habitat restoration; restoration of the creekbed to improve water quality; and restoration of the embankments and levees to enhance public safety. The Project is along the stream bed and the banks of Bear Creek between McKee Avenue and 16<sup>th</sup> Street in Merced City and County, CA.

### **Budget Category (A): Agreement Administration**

The Funding Recipient will respond to DWR's reporting and compliance requirements associated with the agreement administration and will coordinate with the Project managers responsible for implementing the Project. The Funding Recipient will be responsible for compiling invoices for submittal to DWR.

#### **Task A.1: Invoicing**

The Funding Recipient will be responsible for compiling the project invoices and expenditure receipts for submittal to DWR.

#### **Deliverables**

- Annual expenditures and associated backup documentation

#### **Task A2: Reporting**

The Funding Recipient will be responsible for compiling progress reports for submittal to DWR. The Funding Recipient may retain consultants as needed to prepare and submit progress reports and final project completion report.

Reports will meet generally accepted professional standards for technical reporting and the requirements terms of the contract with DWR outlined in Exhibit F of this Agreement.

#### **Deliverables**

- Documentation (e.g., photo) of "Acknowledgment of Credit" per Standard Condition D.2
- Annual Progress Reports
- Final Project Completion Report

### **Budget Category (B): Permitting and Environmental Documentation**

#### **Task B.1: CEQA Documentation**

Prepare CEQA documentation as necessary. Prepare a letter stating no legal challenges to Project during CEQA statutory review period (or addressing legal challenges).

### **Deliverables**

- All Required CEQA documentation
- No legal challenges letter

### **Task B.2: Environmental and Permitting Compliance**

Prepare and acquire all identified federal, state, and local permits

### **Deliverables**

- Copies of all required permits

### **Budget Category (C): Planning/Design/Engineering**

#### **Task C.1: Preliminary Design Engineering Services**

Prepare preliminary design reports for the Project components related to the construction, mitigation and restoration of approximately 6 miles of Bear Creek within the City of Merced.

Map and identify invasive plant overgrowth; identify native plant species and preliminary habitat restoration concepts; identify creekbed, embankment and levee repair locations and conceptual design alternatives to enhance public safety.

### **Deliverables**

- Preliminary design reports or technical memorandums for all sub-projects

#### **Task C.2: Final Design Engineering Services**

Prepare relevant 60% and 100% level construction drawings and specifications including civil, structural, architectural landscape, mechanical, electrical and instrumentation and control for invasive plant removal, habitat restoration, creekbed enhancements, and embankment/levee repairs. Prepare recommended construction schedule.

### **Deliverables**

- 100% Design (Plans/Specs/Engineer's Estimate)
- Construction Schedule

### **Budget Category (D): Construction/Implementation**

#### **Task D.1: Construction Administration**

Manage contractor submittal review, answer requests for information, and issue work directives. A full-time engineering construction observer will be on site for the duration of the project. Construction observer duties may include but are not limited to: documenting of pre-construction conditions, daily construction on-site inspections of construction activities, preparing Owner change orders, addressing questions of contractors on site via Request for Information or Request for Clarification, coordination of specialty inspection and testing, reviewing/updating project schedule, reviewing contractor log submittals and progress payment requests, notifying Contractor if work is not acceptable.

### **Deliverables**

- Bid Documents

- Notice of Advertisement
- Notice of Award
- Notice to Proceed

#### Task D.2: Construction Activities

Construction activities are outlined below. The details will be finalized after Tasks C.1 and C.2 above are completed.

(a): Mobilization and Demobilization: this work shall include mobilization of all activities to begin construction operations at the site, as well as demobilization of all activities for transportation of equipment and materials.

(b): Site preparation will include modifications to the sites to allow for construction; site clearing; excavation; grading and placement of fill materials; habitat restoration; streambed enhancements and bank/levee repairs; paving; and site restoration.

(c). The Project includes the following elements:

- Invasive plant removal
- Habitat restoration
- Creekbed enhancements
- Embankment/levee repairs
- Project mitigation measures and enhancements
- Other safety improvements – Renovate outlet structures discharging into the Creek and other improvements to be recommended through final design for safety improvements.

#### **Deliverables**

- Engineer's Certificate of Completion
- Record Drawings

**EXHIBIT B**  
**BUDGET**

**PROJECT:** Bear Creek Restoration

**IMPLEMENTING AGENCY:** City of Merced

| Budget Category                                      | State Funds        | Agency Cost | Total Project Cost |
|------------------------------------------------------|--------------------|-------------|--------------------|
| <b>A: Agreement Administration</b>                   | \$ 600,000         | \$0         | \$ 600,000         |
| <b>B: Permitting and Environmental Documentation</b> | \$ 600,000         | \$0         | \$ 600,000         |
| <b>C: Project Management, Planning and Design</b>    | \$500,000          | \$0         | \$500,000          |
| <b>D: Construction/Implementation</b>                | \$4,300,000        | \$0         | \$4,300,000        |
| <b>Total</b>                                         | <b>\$6,000,000</b> | <b>\$0</b>  | <b>\$6,000,000</b> |

**EXHIBIT C**  
**SCHEDULE**

**PROJECT:** Bear Creek Restoration

**IMPLEMENTING AGENCY:** City of Merced

| DESCRIPTION                                                   | START      | FINISH     |
|---------------------------------------------------------------|------------|------------|
| Budget Category A: Agreement Administration                   | 01/01/2024 | 12/31/2026 |
| Budget Category B: Permitting and Environmental Documentation | 05/15/2024 | 06/30/2025 |
| Budget Category C: Project Management, Planning and Design    | 05/15/2024 | 08/31/2025 |
| Budget Category D: Construction/Implementation                | 09/01/2025 | 06/30/2026 |

**EXHIBIT D****STANDARD CONDITIONS****D.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**

- A. **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts, disbursements, and any interest earned on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- B. **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited in a separate account, administered, and accounted for pursuant to the provisions of applicable law.

**D.2. ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE:** Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the California State Budget Act of 2022 and through an agreement with the State Department of Water Resources." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

**D.3. AMENDMENT:** This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request.

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

**D.5. AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Paragraph 7 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 Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.

- D.6. BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Funding Agreement with no liability occurring to the State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.
- D.7. CEQA: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) 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. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 7.
- D.8. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
  - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.9. CLAIMS DISPUTE: Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
- D.10. COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- D.11. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

- D.12. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- A. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - B. Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
  - D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- D.13. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.14. DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.15. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:
- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
  - B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

- i. The dangers of drug abuse in the workplace,
  - ii. Funding Recipient's policy of maintaining a drug-free workplace,
  - iii. Any available counseling, rehabilitation, and employee assistance programs, and
  - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
- i. Will receive a copy of Funding Recipient's drug-free policy statement, and
  - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

D.16. EASEMENTS: Where the Funding Recipient acquires property in fee title or funds improvements to real property already owned in fee by the Funding Recipient or improved using State funds provided through this Funding Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural 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 acceptable to the State may result in termination of this Agreement.

D.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 Exhibit A (Work Plan) and in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).
- B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for funding.
- C. Comply with all applicable California, federal, and local laws and regulations.
- D. Implement the Project in accordance with applicable provisions of the law.
- E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
- F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
- G. Be solely responsible for design, construction, and operation and maintenance of the Project within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
- H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Funding Recipient shall be responsible for any and all disputes arising out of its

contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.

- D.18. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.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.
- D.20. INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.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 Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.
- D.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 Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.
- D.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 payment 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.
- D.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 Exhibits A, B, and C which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.

- D.25. **NONDISCRIMINATION:** During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.
- D.26. **OPINIONS AND DETERMINATIONS:** Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D.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. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D.28. **PRIORITY HIRING CONSIDERATIONS:** If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.
- D.29. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- D.30. **PROJECT ACCESS:** The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D.31. **REMAINING BALANCE:** In the event the Funding Recipient does not submit invoices requesting all of the funds encumbered under this Funding Agreement, any remaining funds revert to the State. The State will notify the Funding Recipient stating that the Project file is closed, and any remaining balance will be disencumbered and unavailable for further use under this Funding Agreement.
- D.32. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

- D.33. RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- D.34. SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.
- D.35. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both if the State determines that:
- A. Funding Recipient, its contractors, or subcontractors have made a false certification, or
  - B. Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.
- D.36. SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.37. TERMINATION BY FUNDING RECIPIENT: Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date and repay all funds disbursed pursuant to this Agreement.
- D.38. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 7, the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 7.
- D.39. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 days advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.40. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.41. TIMELINESS: Time is of the essence in this Funding Agreement.
- D.42. UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:
- A. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
  - B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.

- C. Funding Recipient shall, where State funds are not designated as described in (B) above, allocate, on a pro rata basis, all disbursements that support the program.
  - D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- D.43. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D.44. WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties hereto that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

**EXHIBIT E**  
**AUTHORIZING RESOLUTION**

## EXHIBIT F

### REPORT FORMATS AND REQUIREMENTS

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

#### 1. PROGRESS REPORTS

Progress reports shall generally use the following format. In general, wherever possible please use bulleted format. This format may be modified as necessary to effectively communicate information.

##### PROJECT STATUS

Briefly describe the work performed during the time period covered by the report including but not limited to:

##### PROJECT INFORMATION (as applicable)

- Legal matters
- Engineering Evaluations
- Environmental matters
- Status of permits, easements, rights-of-way, rights of entry and approvals as may be required by other State, federal, and/or local agencies
- Major accomplishments during the reporting period (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
- Identify key issues that need to be resolved

##### COST INFORMATION (as applicable)

- Provide a list showing all project costs incurred during the time period covered by the report by the Funding Recipient and each contractor working on the Project and which of these costs are Eligible Project Costs
- A brief discussion on how the actual budget is progressing in comparison to the project budget included in the Work Plan
- A list of any changes approved to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Work Plan

##### SCHEDULE INFORMATION (as applicable)

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

The Final Annual Report shall contain the following Project completion information and shall generally use the following format.

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

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

COSTS AND DISPOSITION OF FUNDS – A list of showing:

- The date each invoice was submitted to State
- The amount of the invoice
- The date the check was received
- The amount of the check (If a check has not been received for the final invoice, then state this in this section.)
- Summary of project cost including the following items:
  - Accounting of the cost of project expenditure
  - Include all internal and external costs not previously disclosed
  - A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION – Any relevant additional Information should be included.

**EXHIBIT G****STATE AUDIT DOCUMENT REQUIREMENTS 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 details the documents/records that State Auditors would need to review in the event of this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each funded project.

**State Audit Document Requirements****Internal Controls**

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

**State Funding:**

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of public funds received from the State.
3. A listing of all other funding sources for the Project.

**Contracts:**

1. All subcontractor and consultant contracts and related or partners' documents, if applicable.
2. Contracts between the Funding Recipient and other public agencies as related to the State funded Project.

**Invoices:**

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

**Cash Documents:**

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

Accounting Records:

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

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 Funding Recipient's personnel who provided services charged to the Project

Project Files:

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