

FLOOD MAINTENANCE ASSISTANCE PROGRAM

GUIDELINES

DECEMBER 2018



STATE OF CALIFORNIA

THE DEPARTMENT OF WATER RESOURCES

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ACRONYMS AND ABBREVIATIONS

| | |
|--------|--|
| CVFPB | Central Valley Flood Protection Board |
| DWR | Department of Water Resources |
| FMAP | Flood Maintenance Assistance Program |
| LMA | Local Maintaining Agency |
| LOI | Letter of Intent |
| MA | Maintenance Area |
| O&M | Operations and Maintenance |
| OMRR&R | Operations, Maintenance, Repair, Rehabilitation, and Replacement |
| PSP | Proposal Solicitation Package |
| PL | Public Law |
| SPFC | State Plan of Flood Control |
| SWIF | System Wide Investment Framework |
| USACE | United States Army Corps of Engineers |

1.0 INTRODUCTION

Section 1. Program Overview

The Flood Maintenance Assistance Program (FMAP) is a new program providing state funds for eligible maintenance activities to Local Maintaining Agencies (LMAs), including Maintenance Areas (MAs), for the purpose of obtaining acceptable maintenance of the State Plan of Flood Control facilities (levees, channels, and structures).¹

The 2017 Central Valley Flood Protection Plan (CVFPP) update recognized that the operation and maintenance (O&M) of the State Plan of Flood Control (SPFC) facilities has been chronically underfunded. In response to this need, the Budget Act of 2018 (Stats. 2018, ch. 29, Item 3860-001-0001), appropriated funding to the Department of Water Resources (DWR) for Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) costs. It is DWR's intent to work in collaboration with the Central Valley Flood Protection Board (CVFPB) to allocate a portion of these funds to LMAs. DWR's current appropriation by the Legislature is continuous, meaning each year a certain sum will be appropriated to DWR. DWR has developed this new program for the ongoing administration of these funds and estimates that over \$10 million will be available in the first year for eligible applicants.

The primary goals of the CVFPP are to reduce the chance of flooding and property damage during high water events; and, to improve the public safety, community preparedness, and emergency response. Supporting goals of the CVFPP are to improve operations and maintenance, promote ecosystem functions, improve institutional support, and promote multi-benefit projects.

The FMAP will partner with LMAs to work towards sustainable O&M by:

- Providing State funds through a cost-share based program to LMAs to reduce the accumulation of deferred maintenance.
- Providing technical assistance to enable the LMAs to effectively perform the maintenance activities in an efficient manner.
- Securing new OMRR&R assurance agreements between LMAs and the CVFPB.
- Promoting consolidation or regional governance of LMAs so SPFC facilities can be more efficiently and effectively maintained.
- Sustaining and improving eligibility for United States Army Corps of Engineers (USACE) Public Law (PL) 84-99 Program enrollment and ultimately compliance with USACE O&M manual requirements.

¹ Wat. Code, § 9110, subd. (f).

Section 2. Program Description

It is the Legislature's intent that DWR use the FMAP funds to reduce future costs to taxpayers associated with OMRR&R related costs and encourage local consolidation where possible. Consistent with this intent, one requirement of the FMAP program is that a local entity must sign an updated OMRR&R assurance agreement prior to receiving funds. To receive FMAP funding, LMAs shall conform to all flood reporting requirements including reporting information as required by Assembly Bill 156 (Stats. 2007, ch. 368).² DWR will confirm that the required documents and information has been received prior to disbursing any funds under the FMAP program.

DWR will work with the LMAs to fund the development of USACE Letters of Intent (LOI) and System Wide Improvement Framework plans (SWIFs), and associated supporting documents as well as fund eligible maintenance activities to help LMAs attain acceptable maintenance levels for SPFC facilities, first targeting eligibility for the PL 84-99 Program, and eventually obtaining compliance with USACE O&M manual requirements set forth in the Code of Federal Regulations, Title 33, Section 208.10. DWR will work with funding recipients to fund short-term eligible maintenance activities which may include deferred maintenance items as well as other items including rodent abatement and damage repair, and minor erosion and stability repair.

Section 3. Funding Authority

FMAP funds were authorized and appropriated by the California Budget Act of 2018 (Stats. 2018, ch. 29, Item 3860-001-0001) to DWR for costs of operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure. It is the intent of Legislature to fund this program annually. Funds shall be available for expenditures for operations and maintenance of locally maintained levees and related activities that reduce state liability and reduce future costs to taxpayers.

Section 4. Cost-Sharing Requirements

The FMAP does not require a local cost share for eligible maintenance activities. However, matching funds for O&M activities may be provided according to the terms of any future Proposal Solicitation Process (PSP), and each of the program criteria must be met for the LMA to receive funding

Section 5. Eligible Applicants

An applicant must be a local public agency (LMA) with land use authority for the area protected by the SPFC facilities.

Section 6. Eligible Activities

The development of LOIs or SWIFs and associated supporting documents.

Preparation of an engineering report(s) and other documents needed to secure sufficient funding to perform OMRR&R activities.

² Water Code, Division 5, Part 4, Chapter 9 (sections 9110-9142, inclusive).

Any of the activities identified by DWR and USACE inspections that help achieve acceptable level of maintenance to assure system performance are eligible for funding from FMAP. This includes all activities required under Code of Federal Regulations, title 33, section 208.10 and the O&M Manual Standards, such as:

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

FMAP performance will be measured by the execution of a new assurance agreement with the CVFPB and flood reporting compliance. **NOTE** that execution of a new assurance agreement with the CVFPB is required prior to the disbursement of any funds pursuant to this Program. Performance will also be measured through DWR's fall flood system inspections by tracking the unacceptable / minimally acceptable miles of levees in each of the LMAs for:

- Levee vegetation control;
- Rodent damage;
- Levee slope erosion / slips;
- Encroachments;
- Unacceptable / minimally acceptable PL 84-99 problems;
- Channel hydraulic capacity; and,
- All other O&M activities required by Code of Federal Regulations, title 33, section 208.10 and O&M Manual standards

Ineligible Activities

To maximize the use of state funding and to avoid any potential duplication of funds, the following limitations will be applied:

- No O&M funding for LMAs eligible for Delta Subventions Program funding
- No funding for O&M of levees that were recently improved, or are to be improved under the Early Implementation Program/Urban Flood Risk Reduction Program or a USACE project
- Funding will be limited to maintenance activities identified in the LMA's submittal that is not currently covered by local funding

Section 7. Project Costs

Eligible project costs include the reasonable costs of preparation of environmental documentation, environmental mitigation, monitoring, and project construction, and

management. Eligible project costs include those eligible costs incurred after the date an applicant has entered into a funding agreement with DWR.

Costs that are not eligible include:

1. Purchase of equipment that is not an integral part of the funded project.
2. Establishment of a reserve fund.
3. Payment of principal or interest on existing indebtedness, any interest payments, or costs associated with project financing,
4. 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.
5. Duplicate work to obtain new data that the State already has available, unless previously approved by the State or waived by the State.
6. Travel, meals, refreshments, and other per diem costs.
7. Costs of preparing and filing grant or other funding applications.
8. Any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the funded project that will be reimbursed with grant funds from DWR.

Section 8. Proposal Selection and Funding Process

This will be stated separately in the Proposal Solicitation Package (PSP)

Section 9. Requirements when Signing a Funding Agreement with the State

Conflict of Interest and Confidentiality

All participants are subject to State conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the proposal being rejected and any agreement 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.

As part of the conflict of interest requirements, individuals working on behalf of a Funding Recipient may be required by the State 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.

Applicants should be aware that when submitting a proposal to the State, they will waive their rights to the confidentiality of the contents of the proposal. Once final awards have been announced by the DWR, all proposals are subject to disclosure pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.).

Indemnify and Hold Harmless

As part of the funding agreement, applicants shall indemnify and hold harmless the State, its officers, agents, and employees from any and all liability from any claims and damages (including inverse condemnation) arising from the planning, design, construction of repair, replacement, rehabilitation, maintenance, and operation of the project, and any breach of the funding agreement.

Labor Code Compliance

As part of the funding agreement, the funding recipient shall agree to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from the funding 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 will also affirm 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.

California Environmental Quality Act (CEQA)

All activities funded pursuant to FMAP must comply with CEQA. (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under a funding agreement shall not proceed until documents that satisfy the CEQA process are received by DWR and the DWR has completed its CEQA compliance. Any work funded under FMAP that is subject to CEQA shall not proceed until and unless approved by DWR; such approval is fully discretionary. If CEQA compliance by the funding recipient is not complete at the time a funding agreement is executed by the parties, once DWR has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, the funding agreement shall be terminated.

Competitive Bidding and Contractor Hiring

As part of the agreement, the funding recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If a 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. This document is available at: <http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>.

Section 10. Guidelines Amendments

Any or all of the eligibility criteria, requirements, or procedures specified in these Guidelines may be changed, substituted or terminated, and/or other criteria may be added at the State's discretion. They may also be changed as a result of the State legislative actions associated with the passage of the annual State Budget Act or other legislation. Amendments to the final Guidelines will be publicly posted for at least a 45-day public comment period prior to finalization.

Section 11. Directed Funding

In addition to soliciting competitive grants, DWR may use FMAP funds for direct expenditures or directed activities that fulfill the intent of the legislation and DWR priorities. Direct expenditure projects are projects proposed by DWR either in response to a solicitation from a stakeholder, another government entity, or on its own initiative. Direct expenditure projects must address an interest of the State and may be proposed and approved at any time. However, any direct expenditure project shall be evaluated by the same eligibility criteria as competitive grants.

Appendix 1

Draft Local Maintaining Agency Authorizing Resolution Resolution No. _____

A Resolution by the (Governing Body Name) of the (Agency Name) Authorizing a Proposal for funding from the Department of Water Resources and Designating a Representative to Execute the Agreement and any Amendments thereto, for the (Project Name) Project

WHEREAS, the (agency name) is a California Public Agency with responsibility for flood maintenance and land use authority of the Project facilities;

WHEREAS the (agency name) acknowledges that it must submit a new operations, maintenance, repair, rehabilitation, and replacement agreement with the Central Valley Flood Protection Board prior to the receipt of Flood Maintenance Assistance Program funds;

WHEREAS, the (agency name) is authorized to enter into an agreement with the Department of Water Resources and the State of California;

THEREFORE, BE IT RESOLVED by the (Local Governing Body Name) of the (agency name) as follows:

1. That pursuant and subject to all of the terms and conditions of the Budget Act of 2018 (Stats. 2018, ch. 29), the (Local Governing Body Name) authorize the (title of authorized representative), or designee, to execute the funding agreement with the Department of Water Resources and any amendments thereto.
2. That the (title of authorized representative), or designee, shall prepare the necessary data, make investigations, and take other such actions as necessary and appropriate to obtain funding for the (project name) Project.

CERTIFICATION

I hereby certify that the foregoing Resolution (#) was duly and regularly adopted by the (Local Governing Body Name) of the (agency name) at the meeting held on (date), motion by (member name) and seconded by (member name), motion passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Attest:

Chair, (Local Governing Body Name)

(Name and Title)

Appendix 2

Attorney Certification

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

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

Citation: _____

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

Citation: _____

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

Citation: _____

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

Citation: _____

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

Citation: _____

- Is the Applicant required to hold an election before entering into a funding contract with the State? ()Yes ()No

Citation: _____

- Will an agreement between the Applicant and the State be subject to review and approval by other governmental agencies? ()Yes ()No

Identify all such agencies: _____

Citation: _____

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

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

Citation: _____

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

By _____ Date _____
(Signature of Applicant Agency's Attorney)

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

(Name of Applicant Agency)

Appendix 3A

Sample OMRR&R Agreement

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION AGREEMENT BETWEEN

The Central Valley Flood Protection Board
AND

[insert name of funding recipient]

FOR

[Insert project name]

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (“OMRR&R Agreement”) is entered into by and between the State of California (“State”), acting by and through the Central Valley Flood Protection Board, or any successor thereto, (“Board”) and the **[name of Funding Recipient]** (“Funding Recipient”) on this _____ day of _____, 20 **[enter execution year]** in view of the following circumstances:

1. **Flood Maintenance Assistance Program (FMAP) funds were authorized and appropriated by the California legislature for costs associated with improving the operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure of Local Maintaining Agencies (LMAs), pursuant to Water Code Section 12878 et seq.**
2. State funding is available for Eligible Activities pursuant to the FMAP:
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for its FMAP program.
 - The Funding Recipient applied for funding and has signed a Funding Agreement. This Funding agreement is between the State of California Department of Water Resources and the **[insert name of Funding Recipient]** for **[insert project name]** (“Funding Agreement”).
 - The Funding Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation (“OMRR&R”) of State Plan of Flood Control facilities.
 - The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement for State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

2. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient under Water Code section 12642 which states that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
3. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Funding Recipient provides the Board with the assurances specified in this OMRR&R Agreement that Funding Recipient will be responsible for OMRR&R of State Plan of Flood Control Facilities within its jurisdiction; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages arising from OMRR&R activities.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

“Basin:” A separable hydraulic area protected by a system of flood-management infrastructure.

“Board:” The State of California Central Valley Flood Protection Board or any successor thereto.

“Department:” The State of California Department of Water Resources.

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

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair

- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

“Funding Agreement:” The agreement between the State of California Department of Water Resources and the **[insert name of Funding Recipient]** for **[insert project name]** dated _____.

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

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

“OMRR&R Agreement:” This agreement between the Central Valley Flood Protection Board and the **[insert name of Funding Recipient]** for OMRR&R of the State Plan of Flood Control within the jurisdiction of **[insert name of the Funding Recipient]**

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

“State:” The State of California, acting by and through the Board.

“State Plan of Flood Control:” The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Public Resources Code section 5096.805(j).

SECTION I: Obligations of the Funding Recipient

A. General Obligations. The Funding Recipient agrees to the following:

1. To perform OMRR&R of the State Plan of Flood Control within the jurisdiction of the Funding Recipient, including all required mitigation, without limitation. The duties of the Funding Recipient to perform OMRR&R for the State Plan of Flood Control within the jurisdiction of the Funding Recipient shall be accomplished in a manner that does not diminish the flood protection afforded by or jeopardize the structural

integrity of the Project and the flood control system of which the Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.

2. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, free and harmless from any and all claims and damages, including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient
3. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns free and harmless from any and all claims or damages arising out of or in connection with the obligations herein assumed by the Funding Recipient, including any responsibility for claims or damages arising out of work performed by the State on the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient for which the State may be held liable and any claims based upon inverse condemnation.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Funding Recipient hereby accepts responsibility for OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. Specifically, the Funding Recipient shall be responsible for OMRR&R in accordance with applicable federal laws, including without limitation, compliance with O&M requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised version of the Operation and Maintenance Manual, or any Supplement to the Operation and Maintenance Manual.
2. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner land which it owns or controls for access to for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the State Plan of Flood Control

facilities within the jurisdiction of the Funding Recipient located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State, the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.

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

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

SECTION II: Hazardous Substances

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

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for OMRR&R of State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient contain hazardous substances regulated under state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient’s responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. in a manner that will control and minimize the release or threatened release of hazardous substances regulated under state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.

- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of this OMRR&R Agreement shall relieve any responsible person from any liability that may arise under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

The Funding Recipient may delegate or subcontract its responsibilities under this OMRR&R Agreement. In performing the obligations called for in this OMRR&R Agreement, the Funding Recipient shall notify the State when it initially retains, employs, or uses any agencies or firms. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

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

SECTION IV: Procedures for Reimbursing the State

If the Funding Recipient fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.to perform in a manner necessary to provide its designed level of flood protection, then the State, after notifying the Funding Recipient and providing a sixty (60) day opportunity to cure period, may in its sole discretion develop a work plan

and present it to the Funding Recipient with instructions that if the Funding Recipient does not agree to carry out, or is unable to carry out, the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this Agreement. No completion, operation and maintenance, by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

SECTION V: Disputes

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

SECTION VI: Obligation of Future Appropriations

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

SECTION VII: Term of Agreement; Amendment

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

SECTION VIII: Notices

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

If to the [Funding Recipient]:

XXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXX

If to the Board:

XXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXX

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

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Exhibit D-1 to this OMRR&R Agreement.

SECTION X: Authority

The Funding Recipient has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

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

The Central Valley Flood Protection Board **[Funding Recipient]**

| | |
|-------------------------------|-------------------------------|
| By _____ (Name) (Title) | By _____ (Name) (Title) |
| Date: _____ | Date: _____ |

Approved as to Legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

(Name)
(Title)

(Name)
(Title)

STANDARD CONDITIONS OF OMRR&R AGREEMENT

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** 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 OMRR&R 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.

7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. **SEVERABILITY:** Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided.
14. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. 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.
16. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

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

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

19. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

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

20. UNION ORGANIZING: Funding Recipient, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Funding Recipient, by signing this OMRR&R Agreement, hereby certifies that:

- A. No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
- B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
- C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

21. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide, during work on the Urban Flood Risk Reduction Program and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.

23. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:

- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
 - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. INSPECTIONS OF 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.
25. 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.
26. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.

Appendix 3B

Sample OMRR&R Resolution

Resolution No. _____

Resolved by the _____
(Governing body, city council, or other)

of the _____
(Funding Recipient-agency, city, county, or other)

that pursuant and subject to all of the terms and provisions of Budget Act of 2018 (Stats. 2018, ch. 29), that funds awarded to

(Agency, city, county, or other)

by the Department of Water Resources for a Flood Maintenance Assistance Program project titled: _____

(Project title)

have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires

(Agency, city, county, or other)

to assume responsibility for operation and maintenance of

_____.

(Project title)

Therefore, the _____

(Presiding officer, president, city manager, or other official)

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

Passed and adopted at a regular meeting of the _____

(Board of Directors, Supervisors, etc.)

of the _____

(Name of Funding Recipient)

on _____.

(Date)



Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Appendix 4

State Audit Requirements

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

List of Documents for Audit

Internal Controls

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

State Funding:

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

Contracts:

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

Invoices:

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

3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

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

Accounting Records:

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

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

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

Project Files:

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