

ATTACHMENT A

AGREEMENT

AGREEMENT NO. _____

(Agreement for Project Management and Engineering Services for the Huff's Corner Levee Raise & Channel Reconfiguration Phase II Project)

This Agreement ("Agreement") is made and entered into as this ____ day of _____, 2024, by and between the County of Yolo, a political subdivision of the State of California ("County"), MBK Engineers, a California corporation headquartered in Sacramento, California ("Contractor"), jointly referred to as the "Parties" herein.

WITNESSETH

WHEREAS, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

WHEREAS, the County is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert, and competent to perform special services such as project management and engineering services; and

WHEREAS, on April 10, 2024, the County and the California Department of Water Resources ("DWR") entered into Project Partnership Agreement No. 2023-FSRP2021-YCNR-01 (DWR Agreement No. 4600015709; Yolo County Agreement No. 23-248, hereafter "DWR Funding Agreement") for the Huff's Corner Levee Raise & Channel Reconfiguration Phase II Project ("Project"); and

WHEREAS, the Contractor has served as the lead project manager for the Project's initial Phase I effort; and

WHEREAS, Contractor has represented and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County; and

WHEREAS, Contractor represents and warrants that neither Contractor, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

WHEREAS, Contractor further represents and warrants that no conditions or events now exist which give rise to Contractor or any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners being excluded or debarred from any Federal or State program; and

WHEREAS, Contractor understands that the County is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, the Parties agree as follows:

I. BASIC SERVICES

A. Contractor shall furnish and perform project management services for the Huff's Corner Levee Raise & Channel Reconfiguration – Phase II Project in accordance with Exhibit A, and in a manner satisfactory to the Director of Community Services, or their written designee ("Director").

B. Contractor will provide all facilities, equipment, personnel, labor, and materials necessary to provide the foregoing services in accordance with this Agreement.

C. The complete Agreement shall include the following Exhibits attached hereto and incorporated herein:

- Exhibit A: Scope of Work
- Exhibit B: Budget & Rates
- Exhibit C: DWR Funding Agreement
- Exhibit D: Insurance Requirements
- Exhibit E: Workers' Compensation Certificate

In the event of any conflict between any of the provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from Contractor for the County's benefit shall prevail.

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. For the services described in Paragraph I above, and subject to the condition that the services have been completed in a manner satisfactory to the Director or their designee, Contractor shall be compensated on a time-and-materials basis at the rates set forth in Exhibit B to this Agreement.

B. The Director may approve modifications of the term, scheduling, billing rates, and allocation of funds between tasks set forth in Exhibit B; provided, however, that the total amount of compensation to be paid to Contractor for the services required by this Agreement shall not exceed **Three Hundred Ninety-Six Thousand Eight Hundred Seventy-Five dollars (\$396,875)**. The Director shall only consider prospective billing rate modifications once per fiscal year during the term of the Agreement and with at least 45 days' notice of any requested billing rate modifications. In the determination of hourly fees, time allotments shall be calculated to one-quarter of an hour.

C. Contractor shall not be entitled to reimbursement for any expenses except as specifically set forth herein. The compensation set forth above includes reimbursement for all expenses incurred by Contractor in the performance of this Agreement.

III. METHOD OF PAYMENT

A. Contractor shall submit monthly invoices to the County detailing: the services provided; the dates for which the services were provided; the amount of time spent by each staff person providing the services calculated to the one-quarter of an hour; the rate per hour charged for each person providing the service; and an itemization of the actual expenses for which reimbursement is requested. Any claim for additional services shall also include a copy of the Director's written approval in advance of such services being provided. If requested by the County, Contractor shall provide any further documentation to verify the compensation and reimbursement sought by Contractor.

B. Within fifteen (15) calendar days of the receipt of Contractor's detailed invoice, the Director shall either authorize payment or advise Contractor in writing of any concerns that the Director has with the invoice and any need for further documentation.

C. Within thirty (30) calendar days of the Director's authorization for payment of an invoice, the County Auditor-Controller shall either issue the payment or advise Contractor in writing of any concerns that the County Auditor-Controller has with the request and any need for further documentation.

IV. REPORTS

A. Contractor shall provide such reports as are required elsewhere by this Agreement, and such additional information and reports relating to the services otherwise required by this Agreement as are reasonably requested by the Director, as the times and in the manner specified by this Agreement, or by the Director if not so specified. Any other provision of this Agreement notwithstanding, should Contractor fail to provide any report required by this Agreement in a timely manner and as otherwise set forth in this Agreement, County may withhold any payments otherwise due Contractor pursuant to this Agreement, and any other agreement between Contractor and County, until such report is properly submitted as determined by the Director.

B. County shall provide Contractor with all information pertinent to the services required of Contractor by this Agreement which is requested by Contractor, and which is within County's possession. No charge will be made for these materials.

V. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights

and all other rights and interests therein, shall become the property of the County, and Contractor agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. Contractor assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge will be made for any of the foregoing.

VI. RECORDS, ACCESS, RETENTION

Contractor shall retain and make available for review by the County and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all pending audits and proceedings are completed, whichever is later. Contractor shall make such records available for inspection and copying by the County and its designees at any reasonable time. At least thirty (30) calendar days prior to any destruction of these records following the four years, Contractor shall notify the Director. Upon such notification, the Director shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

VII. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Contractor. The decision of the County Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to Contractor, Contractor appeals the decision in writing to the County Board of Supervisors. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting Contractor's position. In connection with any appeal proceeding under this paragraph, Contractor shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the County Board of Supervisors at a regular Board meeting. Pending a final decision of the dispute, Contractor shall proceed diligently with the performance of this Agreement and in accordance with the County Administrative Officer's decision. The decision of the County Board of Supervisors on the appeal shall be final for purposes of exhaustion of administrative remedies.

VIII. TERM AND TERMINATION

A. The term of this Agreement shall be from **July 1, 2024, through March 15, 2026**, unless sooner terminated as hereinafter provided.

B. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe

the default and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty-day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon Contractor default, the County reserves the right to purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

C. This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Contractor pursuant to this Agreement. If the County's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor, in which event the County shall have no obligation to pay the Contractor any further funds or provide other consideration and the Contractor shall have no obligation to provide any further services pursuant this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay Contractor in accordance with this Agreement for all services performed to the satisfaction of the Director before such termination and for which funds have appropriated as required by law.

D. This Agreement may be terminated for any reason by either party at any time during its term, by giving 30 days' written notice to the other party.

E. If Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor.

F. Upon termination of this Agreement or suspension of work by either County or Contractor, Contractor shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Contractor shall become the sole and exclusive property of Yolo County and Contractor shall be entitled to receive compensation for any work completed on such documents and other materials determined by the Director to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Contractor such as sketches, copy, dummies, and all preparatory work for which Contractor is not compensated by the County shall remain the sole and exclusive property of the Contractor.

G. During and following the term of this Agreement, Contractor shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Contractor was compensated by the County without the express written permission of the Director.

IX. APPLICABLE LAWS

A. In the performance of the services required by this Agreement, Contractor shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.

B. Contractor further acknowledges that the Project is funded, in part, with grant funds pursuant to the DWR Funding Agreement (Exhibit C hereto). Contractor agrees to comply with the DWR Funding Agreement requirements applicable to this Project, including:

1. Drug-Free Workplace Certification. By signing this Agreement, Contractor and its 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 the 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. The County'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 the County's drug-free policy statement, and
- ii. Will agree to abide by terms of the County's condition of employment, contract, or subcontract.

2. Compliance with Economic Sanctions. Pursuant to California State Executive Order N-6-22 ("Executive Order") imposing economic sanctions against Russia and declaring support of Ukraine, County shall terminate any contract with any individual or entity that is in violation of the Executive Order or that is subject to economic sanctions therein and shall not enter a contract with any such individual or entity while the Executive Order is in effect. Contractor is required to comply with the Executive Order and take steps in response to Russia's action in Ukraine, including but not limited to, desisting from making new investments in, or engaging in financial transactions with Russia or Russian entities.

C. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. Contractor waives any removal rights it might have under State or Federal law.

X. NON-DISCRIMINATION

A. Nondiscrimination in Services and Benefits. Contractor certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

B. Additional Funding Agreement Nondiscrimination Clause. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin

(including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital/domestic partner status, gender identity, and denial of medial and family care leave or pregnancy disability leave. Contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

XI. CONTRACTOR'S RESPONSIBILITIES; PREVAILING WAGE

A. Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

B. With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

C. If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault. This subsection (b) shall not apply if project-specific general liability policy insures

all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis.

D. Any subcontractor agrees to be bound to the Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. All subcontractors must further agree to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work.

E. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify, and hold harmless the County, its officials, officers, employees, and agents from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with California Labor Code provisions applicable to the services provided pursuant this Agreement, which may include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), and debarment of contractors and subcontractors (Labor Code Section 1777.1), as they may be amended during the term of the Agreement.

1. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all Sub-contractors performing such services must be registered with the California Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable.

2. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. In providing any defense under this

Paragraph, Contractor shall use counsel reasonably acceptable to the County Counsel.

XII. INSURANCE REQUIREMENTS

During the term of this Agreement, Contractor shall at all times maintain, at its expense, the coverages and requirements outlined in Exhibit D.

XIII. WORKERS' COMPENSATION

Contractor shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the certificate attached hereto as Exhibit E.

XIV. NOTICE

A. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Contractor at their respective addresses as follows:

Contractor: MBK Engineers
Attn: Thomas Engler
455 University Avenue, Suite 100
Sacramento, CA 95825
engler@mbkengineers.com

County: County of Yolo
Department of Community Services
Attn: Manager of Natural Resources
292 West Beamer Street
Woodland, CA 95695
NaturalResources@yolocounty.org

B. Any party may change the address or email to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

C. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XV. CONFLICT OF INTEREST

A. Contractor shall comply with the laws and regulations of the State of California

and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.

C. Contractor agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict-of-interest law or regulation, Contractor will immediately inform the County and provide all information needed for resolution of the question.

XVI. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XVII. AUDITS

A. Contractor shall be subject to examination and audit by the State or the County, or both, throughout the term of this Agreement and thereafter for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. Contractor agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this Agreement, and agrees to provide County and/or State with any and all relevant information requested.

B. Any and all books, records, and facilities maintained by Contractor related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such

records may be interviewed. All expenditures of State and federal funds furnished to Contractor pursuant to this Agreement are subject to audit by County, State and/or Federal representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Paragraph C below.

C. Should Contractor expend \$500,000 or more in Federal funds during any fiscal year, Contractor shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the Contractor's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision), and provided in a form satisfactory to the Director.

Contractor shall provide this Audit Report no later than July 31 of each year. In the event that this Agreement expires or is terminated on a date other than December 31, Contractor shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. Contractor shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period, and are made available to the State and/or County upon request.

D. Should an Audit Report or any State or County audit determine that Contractor has misspent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor in the amount of such audit findings and withhold any payment otherwise due under this Agreement until Contractor repays such amount. Contractor shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should Contractor fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from Contractor against any amounts that would otherwise be due from the County to Contractor pursuant to this Agreement or any other agreement or source.

E. Any failure or refusal by Contractor to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

XVIII. ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the Director. If

any portion of the services required of Contractor are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the County for all work undertaken by subcontractors.

XIX. STATUS OF CONTRACTOR

A. It is understood and agreed by all the parties hereto that Contractor is an independent contractor, and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

B. It is further understood and agreed by all the parties hereto that neither Contractor nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that Contractor must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.

XX. AMENDMENT

This Agreement may be amended only by written instrument signed by the County and Contractor.

XXI. WAIVER

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

XXII. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

XXIII. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

XXIV. ADDITIONAL PROVISIONS

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and Contractor only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

C. Debarment and Suspension

1. By signing this Agreement, Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to, 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

2. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

b. Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2(b) herein;
- d. Have not within a three-year period preceding this application/proposal/ agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- e. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and
- f. Will included a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the County program funding this Agreement, and the County shall have the option of terminating this Agreement immediately or at any time thereafter, upon giving Contractor written notice of such termination, if the explanation is not found satisfactory by the County in its sole discretion.

4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

5. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement at any time upon giving Contractor written notice of such termination.

XXV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and Contractor and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CONTRACTOR

COUNTY OF YOLO

DocuSigned by:
Tom Engler
By: 4A53B1934B9B401...
Tom Engler, Principal
MBK Engineers

By: _____
Lucas Frerichs, Chair
Yolo County Board of Supervisors

Date: 6/20/2024

Date: _____

Attest:
Julie Dachtler, Senior Deputy Clerk
Board of Supervisors

By: _____
Deputy (Seal)

Approved as to Form:
Philip J. Pogledich, County Counsel

DocuSigned by:
Kimberly E. Hood
By: 8F28F402B2A2431...
Kimberly E. Hood
Chief Assistant County Counsel

EXHIBIT A
SCOPE OF WORK

SCOPE OF WORK

Task 1 – Overall Project Management

For this Task, MBK staff will provide Project Management support for the Project and at the direction of County staff.

Activities will include, but are not limited to, the following:

- Oversight of budget and schedule for assigned tasks.
- Support to County staff with Quarterly Reports and Invoices to DWR.
- Schedule Project meetings as needed and provide agenda, notes, and action items.
- Provide direct oversight of subcontractors to MBK.
- Support permitting efforts and closeout of permits and contract with DWR.

It is anticipated that these activities will initiate upon notification from the County and continue for the duration of the entire Project until final closeout.

Task 2 – Levee Raise Project Support

Task 2.1 – Engineering and Design

For this Task, MBK will provide engineering and design services by qualified staff to finalize the Levee Raise portion of the Project, as needed. Currently the design is complete; however, it may be necessary to make final adjustments for various unforeseen reasons. Additionally, MBK will provide a set of As-Built Drawings for the County and various interested parties.

It is anticipated that these activities will initiate upon notification from the County and continue for the duration of the entire Project until final closeout.

Task 2.2 – Construction Management

For this Task, MBK staff and/or a qualified subcontractor will provide Construction Management support of the Levee Raise portion of the Project.

Activities will include, but are not limited to, the following:

- Verification of schedule and sequence of construction contractor as designated by the construction contract with County.
- Validation of quantities of materials imported and exported.
- Validation of elevations and contours as designated by the Plans and Specifications in the construction contract with County.
- Participation in regular meetings with County and consulting team.

- Coordination with the biological, cultural, and tribal monitors.

It is anticipated that these activities will initiate upon the start of construction and continue for approximately 3 months or until construction activities are complete.

Task 2.3 – Biological and Cultural Monitoring

Biological and Cultural Resources Monitors will be provided by qualified staff from a to-be-determined MBK subcontractor. The subcontractor will provide Workers Environmental Awareness Program (WEAP) training to construction staff, as required, as well as provide direct on-site monitoring during all construction activities, including mobilization, staging, earthwork, and demobilization. They will also participate in regular meetings with County and consulting team on an as-needed basis.

All monitors described above will possess the authority to halt any, and all, construction activities if they deem necessary and will immediately notify MBK and County staff. Construction may resume once an acceptable solution is determined by all parties.

It is anticipated that these activities will initiate upon the start of construction and continue for approximately 3 months or until construction activities are complete.

Task 3 – In-Channel Repairs Project Support

Task 3.1 – Construction Management

For this Task, MBK staff and/or a qualified subcontractor will provide Construction Management support of the In-Channel Repair portion of the Project.

Activities will include, but are not limited to, the following:

- Verification of schedule and sequence of construction contractor as designated by the construction contract with County.
- Validation of quantities of materials imported and exported.
- Validation of elevations and contours as designated by the Plans and Specifications in the construction contract with County.
- Participation in regular meetings with County and consulting team.
- Coordination with the biological, cultural, and tribal monitors.

It is anticipated that these activities will initiate upon the start of construction and continue for approximately 3 months or until construction activities are complete.

Task 4 – Environmental Permitting Support

Task 4.1 – Levee Raise Project

Support for this Task will be provided by qualified staff from a to-be-determined MBK subcontractor. While the various environmental permits were required by the overall combination of both Projects, there are some unique aspects of the Levee Raise Project that will be addressed here.

Various activities will include, but are not limited to, preconstruction surveys, documentation and reporting to agencies, and participation in regular meetings with MBK and County staff.

It is anticipated that these activities will initiate upon notification from the County and continue for the duration of the entire Project until final environmental permit closeout.

Task 4.2 – In-Channel Repair Project

Support for this Task will be provided by qualified staff from a to-be-determined MBK subcontractor. While the various environmental permits were required by the overall combination of both Projects, there are some unique aspects of the In-Channel Project that will be addressed here.

Various activities will include, but are not limited to, coordinating revisions to current permits, preconstruction surveys, documentation and reporting to agencies, and participation in regular meetings with MBK and County staff.

It is anticipated that these activities will initiate upon notification from the County and continue for the duration of the entire Project until final environmental permit closeout.

Task 4.3 – Off-Site Mitigation Project

Support for this Task will be provided by qualified staff from a to-be-determined MBK subcontractor. The Off-Site Mitigation is required by the environmental permits obtained for the project, and addresses impacts from both Projects.

Activities provided by qualified staff will include, but are not limited to, the following:

- Develop conceptual restoration plan and monitoring/reporting plan.
- Coordination with California Department of Fish and Wildlife staff.
- Coordination with County staff and MBK staff.
- Coordination with various contractors to grade, plant, irrigate, and monitor the mitigation site.
- Ensure compliance with permit conditions.

- **Oversee installation of approved restoration plan.**

It is anticipated that these activities will initiate upon notification from the County and continue for the duration of the entire Project until final environmental permit closeout. Note that this item may require numerous additional years of monitoring and reporting beyond the completion of construction and other permit close-outs.

It is expected that charges to this Task are limited to consulting fees.

EXHIBIT B
BUDGET & RATES

BUDGET & RATES

| | |
|--|-------------------|
| Task 1 – Overall Project Management | \$ 125,000 |
| Task 2 – Levee Raise Project Support | \$ 127,500 |
| <i>Task 2.1 – Engineering and Design</i> | <i>\$ 25,000</i> |
| <i>Task 2.2 – Construction Management</i> | <i>\$ 40,000</i> |
| <i>Task 2.3 – Biological and Cultural Monitoring</i> | <i>\$ 62,500</i> |
| Task 3 – In-Channel Repair Project Support | \$ 25,000 |
| <i>Task 3.1 – Construction Management</i> | <i>\$ 25,000</i> |
| Task 4 – Environmental Permitting Support | \$ 75,000 |
| <i>Task 4.1 – Levee Raise Project</i> | <i>\$ 25,000</i> |
| <i>Task 4.2 – In-Channel Repair Project</i> | <i>\$ 25,000</i> |
| <i>Task 4.3 – Off-Site Mitigation Project</i> | <i>\$ 25,000</i> |
| Project Contingency per DWR Funding Agreement | \$ 44,375 |
| TOTAL: | \$ 396,875 |

Attachment 1 – Schedule of Fees

ATTACHMENT 1

5/24

SCHEDULE OF FEES

1. **Standard Fees:**

| | <u>Per Hour</u> |
|---|-----------------|
| Principal/Principal Engineer | \$265–300 |
| Senior Consultant | 265–300 |
| Supervising Engineer | 230–285 |
| Senior Project Manager | 230–275 |
| Senior Engineer | 180–240 |
| Project Manager | 170–230 |
| Project Accountant | 140–200 |
| Engineer/Hydrologist | 140–200 |
| GIS Professional | 130–200 |
| Water Resources Associate | 110–190 |
| Assistant Engineer | 110–190 |
| Prevailing Rate Surveyor, Chief of Party | 220* |
| Prevailing Rate Surveyor, Rodman/Chainman | 203* |
| GIS Specialist | 90–160 |
| Technician/Drafter | 90–160 |
| Junior Engineer | 90–135 |
| Engineering Aide | 60–95 |
| Technical Editor | 70–140 |
| 3-Person Survey Crew | 360 |
| 2-Person Survey Crew | 305 |

*Subject to CA Department of Industrial Relations (DIR) wage determinations

2. Time spent in appearances at courts or quasi-judicial State or Federal boards and commissions is billed at \$500 per hour for principals and supervising engineers, \$450 per hour for registered engineer staff, and \$300 per hour for other staff.
3. Automobile mileage is billed at the Federal reimbursement rate. Local mileage (less than 20 miles) will not be billed.
4. All other direct non-salary expense, including, but not limited to, transportation and subsistence, commercial printing, reproduction costs, and similar out-of-pocket expenses are billed at actual cost plus a service charge of 10%. Use of GPS equipment is billed at \$60 per hour. Use of MBK owned boat will be billed at \$175/day. Use of MBK owned drones will be billed at \$175-500/day or as specified in a separate agreement. Professional services provided by others billed through MBK will be billed at cost plus a service charge of 5% or as specified in a separate agreement.
5. Billings will be made monthly and payment will be due within 45 days. Accounts not paid within 90 days of presentation will bear interest at the rate of 1½% per month or fraction thereof from the billing date unless other arrangements are made in advance.
6. If accounts are not paid within 90 days of presentation, the firm may retain an attorney to obtain payment. In the event that it does so and payment of all or part of the account is thereafter obtained, reasonable attorney's fees and other costs incurred to obtain such payment shall also be paid, or if payment is obtained by Judgment, shall be awarded as part of the Judgment.



455 University Avenue, Suite 100 ♦ Sacramento, CA 95825 ♦ 916/456-4400 (voice) ♦ 916/456-0253 (fax)

EXHIBIT C

DWR FUNDING AGREEMENT

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

4600015709

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Water Resources

CONTRACTOR NAME

County of Yolo

2. The term of this Agreement is:

START DATE

Upon DGS approval

THROUGH END DATE

December 31, 2025

3. The maximum amount of this Agreement is:

\$2,229,750.00

Two million, two hundred twenty-nine thousand, seven hundred fifty dollars, and zero cents.

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

| Exhibits | Title | Pages |
|----------|--|-------|
| | Project Partnership Agreement between The State of California Department of Water Resources and County of Yolo for Huff's Corner Levee Raise & Channel Reconfiguration - Phase II funded under the Flood System Repair Program | |
| | | |
| | Signatures appear on page 17 of 17 in the attached Project Partnership Agreement | |
| + | | |
| - | | |

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

| | |
|--------------------------------|---|
| AGREEMENT NUMBER 4600015709 | PURCHASING AUTHORITY NUMBER (If Applicable) |
|--------------------------------|---|

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

CONTRACTING AGENCY ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

Approved as to legal form
and sufficiency:

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

Karen D. Jackson
for Asst. General Counsel, DWR

CALIFORNIA DEPARTMENT OF GENERAL SERVICES AP

(If Applicable)



**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

AGREEMENT NUMBER: 2023-FSRP2021-YCNR-01

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

COUNTY OF YOLO

FOR

HUFF'S CORNER LEVEE RAISE & CHANNEL RECONFIGURATION – PHASE II

**FUNDED UNDER THE
FLOOD SYSTEM REPAIR PROGRAM**

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FOR FUNDING RECIPIENTS

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
PROJECT PARTNERSHIP AGREEMENT BETWEEN STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
COUNTY OF YOLO
UNDER THE FLOOD SYSTEM REPAIR PROGRAM

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

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

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

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

“Department” means the State of California Department of Water Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Project Real Estate Plan” means a plan for acquisition of interests in real estate needed to complete the Project which must be reviewed and approved by the State in accordance with Paragraph 19 and Exhibit F.

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

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

“Real Estate Capital Outlay Costs” means reasonably justified costs for real property interests (fee/easement), private utility line relocation (*i.e.*, utility lines serving only one party), damage expenses (wells, fences, irrigation systems) and relocation assistance programs, all of which are to be paid as provided in Paragraph 19.

“Real Estate Support Costs” means reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney’s services fees, engineering services fees, court costs, and title and closing costs.

“Relocation Assistance Costs” means the reasonable and necessary costs from that portion of the Real Estate Capital Outlay Costs which are attributable to financial assistance for relocation as identified in the Project Real Estate Plan and Relocation Assistance Plan required and authorized in accordance with federal and State statutes and regulations, including Government Code section 7260 et seq.; California Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, § 6000 et seq.); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (regulations at 49 C.F.R. Part 24).

“Relocation Assistance Plan” means a plan which specifies all required acquisition and relocation assistance activities, responsibilities, and financial assistance required and authorized in accordance with federal and State statutes and regulations, including Government Code section 7260 et seq.; California Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, § 6000 et seq.); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (regulations at 49 C.F.R. Part 24).

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

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

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

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

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

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

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

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

1. **PURPOSE OF FUNDING.** This funding is made available by State to Funding Recipient to assist in financing a Flood System Repair Program project. Funds may be used only as provided in this Project Partnership Agreement for Eligible Project Costs for the Project described in Exhibit A-1, Overall Work Plan.
2. **TERM OF PROJECT PARTNERSHIP AGREEMENT.** The term of the Project Partnership Agreement shall be from the latest date of execution by the Department of Water Resources and approval by the Department of General Services through, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by **December 31, 2025** and no funds may be requested after **April 15, 2026**.
3. **PROJECT SCHEDULE.** Funding Recipient shall diligently perform or cause to be performed all project work in accordance with the Project Schedule as shown in Exhibit A, Article A-1-B or as otherwise approved by the State in writing. If Funding Recipient does not meet the Project Schedule provided in Article A-1-B, the State reserves the right to withhold funds as provided in Paragraphs 15-17 of this Agreement.
4. **PROJECT COST.** The reasonable cost of building out the Project is estimated to be **\$2,477,500**.
5. **LIMIT ON STATE FUNDS.** The maximum amount payable by the State under this Agreement shall not exceed **\$2,229,750**.

6. FUNDING RECIPIENT'S COST. Funding Recipient agrees to fund the difference, if any, between the actual Project Costs and the amount paid by the State for its share of Eligible Project Costs.
7. ELIGIBLE PROJECT COSTS. Funding Recipient shall only apply State funds for Eligible Project Costs. Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after Department has issued an Eligibility Notice to the LMA for the Project to be performed pursuant to the Project Partnership Agreement. The Guidelines provide a summary of the costs which are considered eligible or non-eligible project costs.
8. COST SHARING BY THE STATE AND FUNDING RECIPIENT.
 - a) The State will pay **Ninety percent (90%)** of Eligible Project Costs. Funding Recipient will be responsible for paying the balance. The Funding Recipient's cost share shall be consistent with the Guidelines for Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects and enhanced cost share provisions of the FSRP Guidelines unless otherwise identified in this Paragraph
9. RESERVED.
10. REQUIREMENTS FOR DISBURSEMENT. Funding Recipient shall meet all conditions precedent defined in the subparagraphs below before State shall be obligated to disburse any funds pursuant to this Project Partnership Agreement. Failure by Funding Recipient to comply may, at the option of State, result in termination of the Project Partnership Agreement. State shall have no obligation to disburse money under this Project Partnership Agreement unless:
 - a) Funding Recipient provides assurance that O&M Agreement requirements as provided for in Paragraph 22 of this Project Partnership Agreement will be adhered to as outlined.
 - b) Funding Recipient has demonstrated compliance with (i) all applicable requirements of the CEQA and NEPA and submitted copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, Project approvals and permits, and mitigation monitoring plan(s), as appropriate); and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submitted copies of the appropriate environmental permits, authorizations and agreements.

In addition to the requirement that the Funding Recipient to demonstrate completion of all required environmental documents, the Department may not issue the approval letter required for combined design and construction projects under Paragraph 1 of this Agreement until it has completed its environmental work and issued a notice of decision in connection with Project Element, Project Feature or Project for which the approval letter has been requested. The Department's concurrence of the Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required.
 - c) Funding Recipient has timely submitted Quarterly Work Plans and Progress Reports as required by Paragraph 20.
11. ADVANCE WORK APPROVALS BY STATE. At least forty-five days prior to awarding a construction contract or initiating construction, whichever is earlier, for any Project, Project Element, or Project Feature, Funding Recipient shall submit to State engineering plans and specifications certified by a California Registered Civil Engineer. No disbursements of funds for the work described will be made until the State has approved the engineering plans and specifications.

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

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

12. PAYMENTS AND CREDITS FOR STATE SHARE OF ELIGIBLE PROJECT COSTS. Eligible Project Costs will be paid or credited by the State in accordance with the cost sharing provisions in Paragraph 8 and according to one or more of the following methods:
- a) For all Eligible Project Costs, work will be divided into two categories: non-construction and construction. Though prior written approval is strongly advised any time the LMA anticipates it will request credit, the Department will consider, on a case-by-case basis, crediting non-construction work performed without prior written approval. In contrast, the Department must have issued prior written approval for actual construction work to be deemed creditable and any conditions described in the written approval must be met before the credit is afforded. The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction Project as defined in the Overall Work Plan. The Funding Recipient shall provide a Statement of Costs detailing such costs in accordance with the applicable provisions of Paragraph 16. The Statement of Costs shall be submitted within 45 days of the effective date of this Project Partnership Agreement. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs. The total credit issued may not exceed the LMA's share of the total project costs. The total credit plus Department's share of the total project costs may not exceed 90 percent of the total project cost.
 - b) This subpart sets forth a process for advance payments of the State share of Eligible Project Costs. Advance payments are made on the basis of estimated budgets included in Quarterly Work Plans and are adjusted quarterly on the basis of a statement of actual Eligible Project Costs.

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

If State determines that advances exceed the State's share of total actual Eligible Project Costs, State may withhold future payments equal to amounts advanced in excess of the State's share of Eligible Project Costs, but only after Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Project Partnership Agreement, Funding Recipient shall remit to State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget. All advance payments made pursuant to this subpart shall be subject to a withholding of 10 percent (10%). This withholding will be held until the required Statements of Costs are provided, at which point the detailed expenditures shall be subject to withholding in accordance with Paragraph 15.
 - c) Payments for eligible Real Estate Capital Outlay Costs, if applicable, will be made in accordance with the provisions of Paragraph 19 and Exhibit F.

13. STATEMENT OF COSTS. The Funding Recipient shall provide State with a Statement of Costs or Statements of Cost, on forms provided by the State for all Eligible Project Costs, with the exception of Eligible

Real Estate Capital Outlay Costs, if applicable, for which the Funding Recipient will provide documentation in accordance with Paragraph 19 and Exhibit F.

- a) Statements of Costs shall be filed by the Funding Recipient quarterly or as otherwise specified in this Paragraph. Funding Recipient shall provide a statement of the incurred Eligible Project Costs for work performed during the period identified in the statement. Each Statement of Costs shall also include: (1) information required to verify that claimed costs were incurred, such as contractor and vendor invoices and receipts for equipment and supplies; (2) a statement of Funding Recipient's payments made to cover its share of Eligible Project Costs, if applicable; and (3) a comparison of the actual incurred Eligible Project Costs with those projected in the Quarterly Work Plans and an explanation of any differences of more than five percent (5%) per task or item from the estimate included in the Quarterly Work Plan budget.
- b) The State will review each Quarterly Work Plan and each Statement of Costs to determine whether claimed costs are, in the opinion of the State, Eligible Project Costs and whether the Funding Recipient has provided adequate information to verify that claimed expenses were incurred.
- c) State may reject a Statement of Costs if: (1) it is submitted without signature of the Funding Recipient's authorized representative; (2) it is submitted under signature of a person other than the Funding Recipient's authorized representative per Exhibit E, or designee; or (3) Funding Recipient fails to timely submit a Final Statement of Costs within the time period specified in Paragraph 13(g). State will notify Funding Recipient of any rejected Statement of Costs, and the reasons for the rejection.
- d) A Statement of Costs containing a mathematical error will be corrected by State, after consultation with the Funding Recipient; and will thereafter be treated as if submitted in the corrected amount. State will provide Funding Recipient with notification of the corrected Statement of Costs.
- e) State will notify Funding Recipient by mail, whenever, upon review of a Statement of Costs, State determines that any portion or portions of the costs claimed: (1) are ineligible to be paid under Federal or State law, or the terms of this Project Partnership Agreement; (2) do not constitute Eligible Project Costs approved by State for funding under the terms of this Project Partnership Agreement; or (3) are not supported by invoices or receipts acceptable to State. Funding Recipient may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). State and Funding Recipient shall then attempt to negotiate a resolution of the claim and adjust the Statement of Costs accordingly. Funding Recipient may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent Statement of Costs. If the claim remains disputed, it may be resolved in accordance with the dispute resolution process set forth in Paragraph 18. If Funding Recipient fails to submit adequate documentation curing the deficiency(ies) in a timely manner, State will adjust the pending Statement of Costs by the amount of the ineligible and/or unapproved cost(s). The requirements for close-out of a Project, Element, or Feature are provided in Exhibit H. A Project, Project Element, or Project Feature will be considered completed when the Funding Recipient has provided the information specified in Exhibit H to the satisfaction of the State.

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

- f) All Statements of Costs, signed by the Funding Recipient's authorized representative per Exhibit E, or designee), shall include a statement that the submitted cost statement is correct to the best of his or her knowledge and belief after a reasonable investigation. The signed statement shall be submitted under penalty of perjury.
- g) At the sole discretion of the State, the State may modify the requirements for preparation and submittal of Statements of Costs in order to improve administration of the State-Federal Flood Control System Modification Program. If the State opts to modify the requirements, it shall notify Funding Recipient in writing of the change(s).

14. **DISBURSEMENT.** Following the review of each invoice, State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes and to provisions as specified in this Project Partnership Agreement. Notwithstanding any other provision of this Project Partnership Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations. Any and all money disbursed to Funding Recipient under this Project Partnership Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.
15. **WITHHOLDING OF FUNDING DISBURSEMENT BY STATE.** From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed for Real Estate Capital Outlay Costs, the State shall withhold ten percent (10%) of the State share until the Project Element of the Project for which the payment is made is completed or, if the work on a particular Project Element is further divided into Project Features, until the work on a Project Feature is completed and the Funding Recipient has executed an Operation and Maintenance Agreement between the Central Valley Flood Protection Board and the Funding Recipient (Exhibit D). A Project, Project Element, or Project Feature shall not be considered completed until the requirements of Exhibit H have been met to the satisfaction of the State. Among these requirements are: (1) the work on such Project, Project Element, or Project Feature has been completed to the State's satisfaction; (2) a Final Statement of Costs has been submitted for Eligible Project Costs for the Project, Project Element, or Project Feature; (3) as-built drawings satisfactory to the State have been submitted to the State; and (4) for a Project, Project Element, or Project Feature, Funding Recipient provides a certification of a Registered Civil Engineer that that portion of the Project has been built in compliance with the plans approved by the State.

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

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

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

16. **WITHHOLDING THE BALANCE OF FUNDING AMOUNT.** Where a portion of the Funding Commitment has been disbursed to Funding Recipient and State notifies Funding Recipient of its decision not to release the balance of the funds withheld pursuant to Paragraph 18 (other than requests for early release of funds made by the Funding Recipient pursuant to Exhibit G), that portion that has been disbursed shall be repaid within 60 days of when the State notifies the Funding Recipient of its decision. Refusal of Funding Recipient to repay within 60 days may, at the option of State, be considered a material breach of this Agreement and treated as default under Paragraph 18.
17. **WITHHOLDING THE ENTIRE FUNDING AMOUNT.** If State notifies Funding Recipient of its decision to withhold the entire funding amount pursuant to Paragraph 15, this Project Partnership Agreement shall terminate, and the State shall no longer be required to provide funds under this Project Partnership Agreement.

18. DEFAULT PROVISIONS AND DISPUTE RESOLUTION.

- a) Events of Default. Funding Recipient will be in default under this Project Partnership Agreement if any of the following occur:
- 1) Material breach of this Project Partnership Agreement or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations.
 - 2) Making any false warranty, representation, or statement with respect to this Project Partnership Agreement or the application filed to obtain this Project Partnership Agreement.
 - 3) Failure to make any remittance required by this Project Partnership Agreement, including any remittance recommended because of an audit conducted pursuant to Paragraph B.4.
- b) Consequences of Default. Should an event of default occur, State shall provide a notice of default to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, which shall be no less than 10 days from the notice of default, State may do any or all, of the following:
- 1) Terminate the Project Partnership Agreement and obligation to make future payments to the Funding Recipient.
 - 2) Complete the Project using its own resources.
 - 3) Contract with the current or any other contractor to compete the Project.
 - 4) Require that the Funding Recipient return all or a portion of state funds disbursed hereunder.
 - 5) Take any other action that the State deems necessary to protect its interests and fulfill its fiduciary responsibilities.
- c) Dispute Resolution.

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

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

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

19. LAND ACQUISITION PROCESS.

Unlike other Eligible Project Costs, certain expenditures made for land acquisition under this Project Partnership Agreement will require review and approval in accordance with the State's established procedures for land acquisition. Thus, the procedures for obtaining payment of the State's share of certain eligible project real estate costs will differ significantly from the procedures used for obtaining payment of other Eligible Project Costs. In particular, costs associated with Real Estate Capital Outlay Costs are subject to the provisions set forth in this Paragraph 19 and Exhibit F. Only costs incurred in a manner consistent with

an approved Project Real Estate Plan as detailed in this Paragraph, will be considered Eligible Project Costs under this Project Partnership Agreement.

- a) Project Real Estate Plan. Funding Recipient, after consultation with State, shall determine the lands, easements, and rights-of-way necessary for construction and O&M of the Project, including those rights required for the flood control structures, temporary construction areas, mitigation sites, borrow sites, spoil sites, access/haul routes, staging areas, private utility relocations; and providing relocation assistance for qualified occupants of acquired property, as required by state and federal statutes, rules, and regulations.

The Funding Recipient may also acquire additional right-of-way for an existing State-authorized flood project if: (1) the Funding Recipient provides a detailed justification for why additional right-of-way is needed to ensure the adequacy of land rights for purposes of O&M; and (2) the State in its sole discretion finds that acquisition of additional right-of-way is justified.

Funding Recipient will submit to State a Project Real Estate Plan. Guidelines for such a plan, to establish acceptable Project Real Estate Requirements, will be provided by the State. The Project Real Estate Plan shall include such details as narrative description of the real estate requirements including a breakdown of Funding Recipient's estimate of total acreage to be acquired, type of real property interests to be acquired, and cost projections of eligible real estate project costs. The Project Real Estate Plan shall also include lands needed for other project purposes, such as mitigation and other regulatory needs, and identify proposed end land uses for project lands. The Project Real Estate Plan shall also include: a property owner tract register (matrix), identifying impacted property owners, real property interest to be acquired, and area of acquisitions; a real estate requirement map exhibit; and design plans and specifications. Funding Recipient may submit the Project Real Estate Plan by Project, Project Element, or Project Feature.

Funding Recipient's Project Real Estate Plan shall be based on, at a minimum, 60% designs, plans and specifications, which shall include: topographic drawings with the project design features illustrated; assessor parcel numbers (APN), property lines, flood control structure, private utility relocations with the responsible party to relocate or protect in place noted; mitigation sites, borrow sites, spoil sites, access/haul routes, and staging areas.

Funding Recipient's Project Real Estate Plan will include a baseline cost estimate for eligible Real Estate Capital Outlay Costs and Real Estate Support Costs.

State shall provide Funding Recipient with a written approval of the Project Real Estate Plan. Funding Recipient is at risk of not receiving cost-sharing for land acquisition activities performed prior to receiving State's approval of the Project Real Estate Plan.

Funding Recipient shall provide or acquire all necessary real property services for all parcels in support of approved Project Real Estate Plan in accordance with the land acquisition process described in this Project Partnership Agreement, including the services, and materials necessary to fulfill the land acquisition process and accomplish the following tasks:

- 1) Geodetic services including field surveys, examination of title to all parcels, including obtaining preliminary title reports, or litigation guarantees, clearance of exceptions to title, policy of title insurance, the preparation of legal descriptions, maps, and deeds.
- 2) Appraisal of all parcels establishing the fair market value.
- 3) Environmental site assessment reports to determine the existence of hazardous and toxic waste materials.
- 4) Preparation of written offer including necessary acquisition documents including purchase agreements, maps, and deeds for all parcels. Funding Recipient will also prepare all other necessary temporary entry permits, rights of entry, borrow and spoil agreements, and lease agreements.
- 5) Negotiations for the acquisition of all parcels by deed and contract and/or condemnation. For parcels being acquired by condemnation, an order of possession shall be deemed "acquisition."

- 6) Preparation of memorandums of settlement, for transactional review and approval including settlement justification, escrow instructions worksheet and closing.
- 7) Escrow and closing services required to consummate the transaction which are called for in the purchase agreements including clearing title exceptions at close of escrow, funding, and issuance of a policy of title insurance.
- 8) Preparation of a Relocation Assistance Plan.
- 9) Preparation of a land acquisition final accounting package.

Descriptions of these activities are set forth in detail in Exhibit F to this Project Partnership Agreement.

Funding Recipient shall: (1) keep State apprised of its land acquisition activities and the activities of its contractors; (2) consult with State on matters concerning compliance with State and federal acquisition rules and regulations; (3) keep State apprised of all lease activities; and (4) provide complete access as requested to its records relating to such land acquisition.

- b) Real Property Acquisition Disbursement Process. For acquisition of fee title or other interest in each parcel of land, Funding Recipient may utilize any of the three disbursement approaches. The first, set forth in subpart 1 below, is the standard approval process and provides the Funding Recipient with 100% of the State's cost share for Real Estate Capital Outlay Costs upon the Funding Recipient's completion of all land acquisition requirements as set forth in Exhibit F. The second approach, set forth in subpart 2 below, provides a mechanism whereby the State will advance funding to the Funding Recipient for real estate capital outlays prior to completion of all land acquisition requirements set forth in Exhibit F. Under this approach, Funding Recipient is not guaranteed to receive 100% of its eligible Real Estate Capital Outlay Costs. The final approach, set forth in subpart 3 below, provides the process under which the State will advance Real Estate Capital Outlay Costs and, to the extent required by law, any Real Estate Support Costs for condemnation proceedings. Because the Funding Recipient may need to condemn only some of the parcels required to complete the Project, the State anticipates the Funding Recipient may utilize more than one of the three disbursement approaches. Regardless of which disbursement approach is used, if a local agency proposes to enter into an agreement to purchase real estate for the Project or indicate its assent to a proposed court order setting just compensation, the local agency is required to obtain the prior written approval of the State. A local agency that does not obtain prior written approval from the State is at risk of disallowance of any amount over what the State, in its sole discretion, determines is just compensation to the landowner. The State may, at its sole discretion, waive the requirement to obtain prior written approval of the State.
- 1) Standard Disbursement Approach. Upon completion of the applicable land acquisition standards and requirements set forth in Exhibit F, to this Project Partnership Agreement, including the submission of a land acquisition final accounting package for the entire Project, the State will disburse 100% of its cost share of real estate capital outlays to Funding Recipient.
 - 2) Advancement of State Cost Share Prior to Completion of Land Acquisition Requirements. If requested by Funding Recipient, the State will advance fifty percent (50%) of the State cost share of the appraised fair market value of the property after State completes its preliminary review and approval of the Project Real Estate Plan, appraisals reports, cadastral and geodetic documentation environmental site assessment reports, and remediation plan, if necessary, for the property. The advance will be made directly to an escrow account established to hold funds for the seller of the parcel for release upon closing. At closing, the State will advance into the escrow account for immediate release to the seller another twenty-five percent (25%) of the State cost share of the appraised fair market value of the property. The State will reimburse Funding Recipient for the remaining twenty-five percent (25%) of the State cost share of the approved fair market value of the property plus any unpaid associated capital outlays, up to the approved fair market value of the Real Estate Capital Outlay Costs, after Funding Recipient has followed the entire approval process including the submission of a land acquisition final accounting package for individual parcels. If the amount approved is less than the amount already paid to Funding Recipient, the difference will be deducted from the State cost share for other project expenses not yet reimbursed to Funding Recipient. If the State cost share of the approved fair market value is higher than the State cost share

of the amount outlined for capital outlays in Funding Recipient's Project Real Estate Plan, the State will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Project Partnership Agreement, Paragraph 5. Any necessary environmental remediation shall be completed prior to transfer of the property to the State and the payment of the remaining State cost share.

- 3) Eminent Domain Disbursement Procedures. If eminent domain proceedings are necessary pursuant to applicable law, including Government Code section 7267.1, prior to receiving any reimbursement the Funding Recipient shall provide to the State:
- (a) A copy of the adopted and executed Resolution of Necessity;
 - (b) A copy of the Complaint in Eminent Domain filed with the appropriate Court; and
 - (c) A statement justifying why the acquisition of the property by eminent domain is necessary, including a history of efforts to settle with the landowner.

If the Funding Recipient fails to provide these documents supporting use of eminent domain, the State will withhold the State's share of the Real Estate Capital Outlay Costs for acquiring the property, until such time as the appropriate documents are provided.

Following its preliminary review and approval of the independent appraisal of the parcel submitted by the Funding Recipient, the State will: (1) advance 100% of the State cost share of the fair market value of the parcel, as determined by the independent appraisal; and (2) any additional associated Real Estate Capital Outlay Costs and Real Estate Support Costs, as required by applicable law, with the Court. At the sole discretion of the State, the State may become a party to the condemnation proceeding. The funding and reimbursement procedures described further below will be implemented whenever eminent domain proceedings are required.

After all other appraisals, cadastral, geodetic, and environmental site assessment reviews, transaction reviews, and Department approvals, and a Court Order approving the condemnation of the property, the State will pay the State cost share of the Court approved total just compensation for the parcel minus what has been advanced before. Provided a Court Order approving the condemnation of the property has been made, no additional review and approval by the Department of General Services is required. However, such payments will be subject to the cap on total funds established in the Project Partnership Agreement, Paragraph 5. Therefore, if the State cost share of the Court approved total just compensation is higher than the State cost share of the amount outlined for the property acquisition in Funding Recipient's Project Real Estate Plan, the Department will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Project Partnership Agreement.

- c) Relocation Assistance Cost. For Relocation Assistance Costs to be eligible for cost sharing with the State, a Funding Recipient is required to submit a Relocation Assistance Plan to the State for preliminary review and approval. After the State completes its preliminary review and approval of the Relocation Assistance Plan and approves a request for advance of Relocation Assistance Costs, the State shall advance seventy-five percent (75%) of the State cost share of the Relocation Assistance Costs as identified in the Relocation Assistance Plan and specified in the request for advance of Relocation Assistance Costs. The State will reimburse Funding Recipient for the remaining twenty-five percent (25%) of the State cost share of Relocation Assistance Costs after the Relocation Assistance Plan, associated file documents, and cost expenditures have been reviewed and approved by the State.
- d) Real Estate Credit. If the Funding Recipient seeks reimbursement of eligible Real Estate Capital Outlay Costs for a parcel where prior to execution of this Project Partnership Agreement just compensation has been paid and the escrow account has closed, or after a final order of condemnation has been issued, the State shall issue credit for such eligible Real Estate Capital Outlay Costs. The procedures for obtaining credit of the State's share of certain Eligible Project Costs will require review and approval in accordance with the State's established procedures for land acquisition. Real Estate Capital Outlay Costs are subject to the provisions set forth in this Paragraph 19 and Exhibit F. Eligible Real Estate Capital Outlay Costs

where the acquisition of a parcel has not closed escrow or has not been issued a Final Order of Condemnation shall be considered an open transaction and can be considered for reimbursement.

- e) Remnant Real Property. In the event any lands, easements, or rights of way acquired by Funding Recipient are not used for the Project, and State has participated in cost sharing for such acquisitions, such lands, easements, or rights of way shall be deemed a remnant and may be sold. Upon the sale of remnant property, the State shall receive the percentage of the proceeds that is the State share under Paragraph 8. Alternatively, Funding Recipient may elect to retain ownership by paying State the percentage of the approved fair market value that is the State share under Paragraph 8. State shall have a right of first refusal on any remnants offered for sale by Funding Recipient. State's right of refusal shall remain open for 60 days after Funding Recipient gives written notice.
- f) Leased land. In the event any land acquired by Funding Recipient is subject to a lease or leases, Funding Recipient shall ensure that any such leases are identified in the Project Real Estate Plan, including arrangements that address what happens to such lease interests upon acquisition of title by the State. Funding Recipient must provide State with notice of all proposed leases of property acquired under this agreement prior to the Funding Recipient initiating negotiation of those leases. All proposed lease agreements must be approved by the State prior to execution by the Funding Recipient. State must be given notice of all proposed modifications to lease agreements and must approve such modifications in writing before they are effective.

In any event, all net proceeds received by Funding Recipient from any such lease agreement shall be applied as a credit to the State on Statements of Costs submitted pursuant to Paragraph 13 of the Project Partnership Agreement. Lease Credits need to be reported in the Quarterly Progress Reports. No land necessary for construction of the funded improvements shall be subject to a lease not approved by the State when conveyed to the State without the express written consent of the State. Any other land acquired by the Funding Recipient to be transferred to the State under this Project Partnership Agreement shall not be subject to any lease for longer than one year remaining when transferred to the State without the express written consent of the State.

If the Funding Recipient executes or modifies a lease for land included in the Project Real Estate Plan without adhering to the requirements of this Paragraph, the State at its sole discretion may deduct the State's share of the funds used to acquire the land from the Final Statement of Costs prepared upon completion or termination of the Project or any Project Element or Project Feature.

- g) If the Funding Recipient must remedy a failure to comply with the provisions of Paragraph 18 and Exhibit F, and the remedy increases Eligible Project Costs, the State may disallow payment of the State's share of the increase in Eligible Project Costs. If the Funding Recipient fails to comply substantially with the provisions of Paragraph 19 and Exhibit F, and if Funding Recipient does not remedy any such failure to the State's satisfaction, the State may withhold from Funding Recipient all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests.
- h) Land Acquisition Closeout. A final accounting of Real Estate Capital Outlay Costs for a Project, Project Element, or Project Feature shall be included with the Final Statement of Costs.

20. SUBMISSION OF INFORMATION BY THE FUNDING RECIPIENT.

- a) Quarterly Work Plans: The Funding Recipient shall submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Project Partnership Agreement. Within seven (7) days of the effective date of this Project Partnership Agreement, the Funding Recipient shall submit its first Quarterly Work Plan for the time period between the effective date of the Project Partnership Agreement and the end of that calendar quarter and then quarterly thereafter. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks), and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days

before the work covered by the plan is scheduled to begin. Exhibit C, Quarterly Work Plan and Report Formats, provides an example template for the Quarterly Work Plan.

- b) Quarterly Progress Reports: Funding Recipient shall submit progress reports on the status of the Project to State. Progress reports shall be filed quarterly. No later than 60 days after the time period covered by a Quarterly Work Plan, the Funding Recipient shall submit a Quarterly Progress Report for the time period covered by the Quarterly Work Plan. The submittal and approval of these reports is a requirement for continued disbursement of State funds. Quarterly Progress reports shall summarize the work completed during the reporting period, include a statement of construction progress compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project. The reports shall include total interest earned to date on State funds, and any lease credits due to the State from lease agreements, if any. Exhibit C, Quarterly Work Plan and Report Formats, provides an example report template. The Funding Recipient may request in writing that the State grant permission to combine the Quarterly Progress Report required by this Paragraph with other reports required by this Project Partnership Agreement and the State may, at its sole discretion, approve such a request.
- c) Project Completion Report: Funding Recipient shall submit a Project Completion Report within ninety (90) calendar days of completion of all tasks associated with the Project. The Final Project Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project and three sets of as-built drawings. The Project Completion Report shall also include certification of final Project by a Registered Civil Engineer, consistent with Paragraph B.16. of this Project Partnership Agreement. Exhibit H provides further information regarding what the report is to contain.
- d) Project-Associated Work: The work plans and reports described in subparagraphs 20(a) through 20(d) above shall include information regarding any Project-Associated Work, which is work on projects that are associated with the work to be done under the Overall Work Plan but will not be funded under this Project Partnership Agreement. The State will determine the extent of the information required concerning Project-Associated Work on a case-by-case basis in consultation with the Funding Recipient.
- e) Flood Risk Resolution: Funding Recipient has acknowledged the current Level of Protection and flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities or counties and other agencies with flood management responsibilities located in the areas protected by their proposed projects. Funding Recipient has provided copies of the resolution or resolutions to the State. The Funding Recipient acknowledges that each resolution provides that any subsequent resolutions that would modify or rescind the resolution must be first approved by the State. Funding Recipient agrees that it shall provide any subsequent resolution for approval by the State no less than thirty (30) days before the resolution is acted upon by the governing body of the affected city or county or other agency with flood management responsibilities. State agrees that it shall not unreasonably withhold approval of a resolution acknowledging flood risk.

21. RESERVED.

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

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

- a) Funding Recipient has submitted a fully executed and legally binding agreement to Assume Responsibility for O&M between the Funding Recipient and each appropriate legal entity which requires

each such legal entity to also seek to enter into an O&M agreement with the Central Valley Flood Protection Board, or any successor thereto, that is substantially in the form of Exhibit D to this Project Partnership Agreement. Each agreement to Assume Responsibility for O&M shall be reviewed and approved by the State in writing in advance of execution by the parties thereto.

- b) Funding Recipient will comply with the terms of this Agreement to Assume Responsibility for O&M.
- c) In the event that the counterparty to an agreement to Assume Responsibility for O&M fails to comply with the terms of its Agreement to Assume Responsibility for O&M, Funding Recipient agrees that it shall continue to have responsibility for O&M.

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

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

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

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

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

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

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

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

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

Mrs. Elisa Sabatini
Manager of Yolo County Natural Resources
292 West Beamer Street
Woodland, CA 95695
(530) 406-5773
Elisa.Sabatini@yolocounty.org

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

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

EXHIBIT A: OVERALL PROJECT WORK PLAN, BUDGET, AND SCHEDULE
EXHIBIT B: STANDARD CONDITIONS
EXHIBIT C: QUARTERLY WORK PLAN AND REPORT FORMATS
EXHIBIT D: RESERVED
EXHIBIT D-1: RESERVED
EXHIBIT D-2: RESERVED
EXHIBIT E: RESOLUTION ACCEPTING FUNDS TEMPLATE
EXHIBIT F: LAND ACQUISITION PROCESS REQUIREMENTS
EXHIBIT G: EARLY PARTIAL RELEASE OF CERTAIN WITHHELD FUNDS
EXHIBIT H: PROJECT OR ELEMENT/FEATURE CLOSEOUT
EXHIBIT H-1: RESERVED
EXHIBIT I: STATE AUDIT DOCUMENT REQUIREMENTS AND FUNDING MATCH GUIDELINES
FOR FUNDING RECIPIENTS

26. INDEPENDENT REVIEW.

The Funding Recipient will select a panel of independent reviewers of at least two and no more than five individuals who are distinguished experts in engineering, hydrology, or other appropriate discipline and free of any real or apparent conflict of interest. Department must approve the number and selection of the independent reviewers and provide direction as to the scope and extent of required review activities. The Funding Recipient will administer the Independent Review Panel's review of the Funding Recipients design and construction plan in consultation with the Department. The costs of the Independent Review are Eligible Project Costs and will be cost-shared in the same manner as all other eligible cost in accordance with Paragraph 8. The Funding Recipient agrees to cooperate fully with the State in conducting the Independent Review and agrees to make any required change to the Overall Work Plan if the Independent Review should suggest changes so long as those changes add no more than 15% to the cost of the Project and the State requires the change(s). The State also reserves the right to remove features of the Project that have become unaffordable or no longer demonstrate economic feasibility because of the Independent Review results. If the changes suggested by the Independent Review cost more than 15% of the total Project cost and render the Project unaffordable, the State and Funding Recipient commit to working together in good faith to identify more affordable, feasible and efficient ways of achieving the Project goals. This agreement to work together in

Agreement 2023-FSRP2021-YCNR-01
County of Yolo

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good faith includes a commitment to seek additional sources of funding for these increased Project costs. Modifications to the Overall Work Plan shall be made in accordance with Paragraph B.24. of this Project Partnership Agreement.

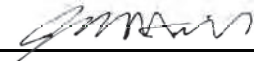
Agreement 2023-FSRP2021-YCNR-01
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IN WITNESS WHEREOF, the parties hereto have executed this Project Partnership Agreement as of _____, **2023**.

State of California
Department of Water Resources

County of Yolo

By 

By 

Name Jeremy Arrich

Name Leslie Lindbo

Title Manager, Division of Flood Maintenance

Title Director of Community Services

Date 12/6/2023

Date 10/11/2023

Approved as to Legal Form
And Sufficiency

Approved as to Legal Form
And Sufficiency

By 

By 

Name Robin E. Brewer

Name Kimberly E. Hood

Title Asst. General Counsel

Title Chief Assistant County Counsel

Date 11/27/2023

Date 10/10/2023

Article A-1

Overall Work Plan Huff's Corner Levee Raise & Channel Reconfiguration Phase II

Yolo County Natural Resources
Department

General Background

The section of Cache Creek known as Huff's Corner is a small reach on the right bank extending approximately 2700-feet upstream from Interstate 5. The levee was initially constructed by the US Army Corps of Engineers (USACE) in 1960, and Yolo County has been the local maintaining agency since its construction. Only the eastern 1,500-feet of this levee is within the State Plan of Flood Control (SPFC), and this project is only addressing the SPFC portion of the levee.

In October 2012, Yolo County, through the Central Valley Flood Protection Board (CVFPB), initiated the process of forming a Maintenance Area. The maintenance area was not formed due to the initial cost of completing the deferred maintenance required for the formation of a Maintenance Area was prohibitive to the county and local landowners. In early 2018, MBK Engineers was contracted to provide recommendations as to what would be required to catch up on the deferred maintenance to restart the Maintenance Area formation process. In addition to the deferred maintenance, two other major levee improvement projects were identified: (Phase I) a channel reconfiguration to control erosion, and (Phase II) a full raise of the entire reach of SPFC levee.

In June 2020, Yolo County and the Department of Water Resources entered into project partnership agreement under the Flood System Repair Program (FSRP) to start these critical repairs. Under the existing contract, Yolo County has:

- Completed design and engineering for both the levee raise and channel reconfiguration projects
- Acquired all necessary environmental and regulatory permits related to the channel reconfiguration and has nearly completed construction of this portion of the project
- Begun acquiring the regulatory and environmental permits for the levee raise portion of the project
- Begun the process of acquiring the land necessary to complete the levee raise project

The funds in the existing contract are expected to be fully depleted before construction can begin on the Phase II portion of the project.

The focus of this workplan is Phase II of the Huff's Corner Levee Raise and Channel Reconfiguration Project.

Project Descriptions

Phase II – Full Levee Raise

The USACE Periodic Inspection Report identifies the entire 1500-foot reach of State Plan of Flood Control (SPFC) levee as being freeboard deficient and falling below the DWSE. This

project proposes to raise the entire reach from 2.9 to 4.8 feet to meet the 1957 design profile plus 3-feet of freeboard.

Project Site

The Project Site is located on of Cache Creek in Yolo County. Phase II, the full levee raise, will address the entire 1,500-foot-long reach of SPFC levee, starting at Interstate 5 and extending westward to County Road 18.

Description of Project Elements and Features

The following is a general list of features needed to complete Phase II of this project.

Identification of features:

- Feature 1: Permitting
 - Feature 2: Real Estate and Right-of-Way
 - Feature 3: Construction Management
 - Feature 4: Construction
 - Feature 5: Off-Site Environmental Mitigation Implementation
 - Figure 6: Final Inspection and Completion Report
-
- Summary of primary activities: Permitting activities are expected to include CEQA and NEPA documentation, wetlands delineation, streambed alteration agreement, consultation with USFWS under Section 7 of the ESA, cultural resource survey, State Lands Commission lease/permit, and a Minor Section 408 permit. Right-of-way and construction easement activities are expected to include approximately 2 acres of real estate acquisition.
 - Major construction activities for the levee raise include: relocating existing utilities; clearing, grubbing and stripping of the widened levee footprint; potential degradation of the existing levee (based on the geotechnical exploration findings); construction of approximately 1,500 linear feet of reconfigured levee; restoration of the final levee embankment and staging/lay down areas; and establishing erosion control vegetation on the embankment slopes and toe access corridors as appropriate.
 - In-Channel Repairs: Significant rains and resulting high flows within weeks of completion of Phase I construction eroded a portion of the newly created south bank terrace and deposited a fresh gravel bar on the opposite north bank. The in-channel repair aims to restore the original project's design condition and add measures to discourage future erosion. The repair project will re-establish design terrace elevations using gravel material newly deposited on the site during 2022-2023 flows. The terrace will be re-

covered with erosion control fabric and replanted to the original design condition. At the apex of the bend at Huff's Corner, some additional twelve-inch rock will be installed over the slope of the repaired terrace to protect this area from future high flows. This will be done in a manner consistent with rock placement at the upstream and downstream extents of the terrace in the original project design.

Construction management

Yolo County and MBK, acting as its engineering consultant, will perform necessary field construction management. This will include: ensuring the completion of environmental permitting; monitoring contractor performance in compliance with plans and specifications; coordinating with DWR and other regulatory agencies and stakeholders; and ensuring appropriate environmental monitoring during construction.

Real Estate

Yolo County will perform necessary real estate activities, including but not limited to: environmental site assessments; real estate assessments and appraisals; property acquisition negotiations; and negotiation of temporary and/or long-term easements as necessary to complete site repairs. The Project will require permanent real estate acquisition to complete the levee raise, and temporary construction easements or right of way access for staging areas during the whole construction phase. The location of the Staging and Construction Laydown area has not yet been determined.

Environmental Permitting

Yolo County will be responsible for obtaining environmental, regulatory permits (as applicable). The project is expected to require a CEQA Mitigated Negative Declaration (MND), a NEPA finding of No Significant Impact (FONSI) and Section 408 permit from USACE.

Project management and Project Administration

Yolo County and MBK Engineers, acting as its engineering consultant, will perform necessary and reasonable project management and administration. Administrative costs are not to exceed 15% of the construction costs.

Project management will include preparing work plans, progress reports, and plans and specifications; attending project meetings, subcontractor procurement, and coordinating with DWR and other regulatory agencies and stakeholders.

Project Administration includes maintaining the cost accounting system, subcontract administration, review and approval of invoices, and administering Statements of Costs and other required documents to support advance payments and/or reimbursements.

- Identification of Features:
 - Feature 1: County Labor (e.g. in-kind services)
 - Feature 2: Program Consultant Expenses (e.g. program manager)
 - Feature 4: General Expenses
- Deliverables: Quarterly Work Plans, Quarterly Reports, Statements of Cost

Article A-1-A

Budget

| Item | Estimated Cost |
|--|-----------------------|
| Degrade and Construct Levee (Contractor Fees) | \$750,000.00 |
| CM/PM During Construction | \$40,000.00 |
| Environmental Permit Support | \$25,000.00 |
| Biological, Cultural, Tribal Monitoring | \$125,000.00 |
| Engineering PM and Design Support (MBK) | \$25,000.00 |
| Contingency (25% of items above) | \$241,250.00 |
| Permit Fees – Cal Trans Encroachment | \$20,000.00 |
| Tree Removal - Winter 2023 | \$25,000.00 |
| | |
| In-Channel Repairs (Contractor Fees) | \$250,000.00 |
| Environmental Permit Support | \$25,000.00 |
| Engineering Design | \$35,000.00 |
| Construction Support, Coordination, Close-out | \$15,000.00 |
| Contingency for 2023-24 Flood Season and Increased Damages | \$81,250.00 |
| | |
| Off-Site Compensatory Mitigation | \$490,000.00 |
| Permit Support and Coordination | \$25,000.00 |
| | |
| PG&E Electrical Relocation | \$80,000.00 |
| | |
| County Staff Project Management | \$100,000.00 |
| | |
| MBK Project Management | \$125,000.00 |
| PROJECT TOTAL | \$2,477,500.00 |

State Cost Share (90%) \$2,229,750.00

Article A-1-B

Schedule

Yolo County and MBK Engineers will provide a project schedule giving start dates and durations for the various project elements. This schedule may be updated or amended as progress is made.

- Project Start: May 1, 2024
- Utility Relocations: May through June 2024
- Levee Construction: July through December 2024
- Off-Site Mitigation Implementation: May through September 2024
- Levee Construction Contingency: June through September 2025
- Project Closeout: No later than December 2025

Exhibit B: STANDARD CONDITIONS

- B.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**
- A. **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Project Partnership Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
 - B. **Disposition of Money Disbursed:** All money disbursed pursuant to this Project Partnership Agreement shall be deposited in a separate account, administered, and accounted for pursuant to the provisions of applicable law.
 - C. **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Project Partnership Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) calendar days of the expiration of the Project Partnership Agreement, whichever comes first.
- B.2. AMENDMENT:** This Project Partnership Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.
- B.3. AMERICANS WITH DISABILITIES ACT:** By signing this Project Partnership Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- B.4. AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Project Partnership Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Project Partnership Agreement, and State may elect to pursue any remedies provided in Paragraph 18 or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.
- Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Project Partnership Agreement with respect of all matters connected with this Project Partnership Agreement, including but not limited to, the cost of administering this Project Partnership Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.
- B.5. BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Project Partnership Agreement does not appropriate sufficient funds for this program, this Project Partnership Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Project Partnership Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Project Partnership Agreement and Funding Recipient shall not be obligated to perform any provisions of this Project Partnership Agreement. Nothing in this Project Partnership Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Project Partnership Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Project Partnership Agreement with no

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

- B.6. CEQA: Activities funded under this Project Partnership Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 18.
- B.7. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
 - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- B.8. CLAIMS DISPUTE: Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
- B.9. COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Project Partnership Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- B.10. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Project Partnership Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- B.11. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- A. **Current State Employees**: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - B. **Former State Employees**: For the two-year period from the date, he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter

into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

- C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
 - D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- B.12. **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide throughout the term of this Project Partnership Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- B.13. **DISPOSITION OF EQUIPMENT:** Funding Recipient shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- B.14. **DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Project Partnership Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:
- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
 - B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. Funding Recipient's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
 - C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Project Partnership Agreement:
 - i. Will receive a copy of Funding Recipient's drug-free policy statement, and
 - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.
- B.15. **EASEMENTS:** Where the Funding Recipient acquires property in fee title or funds improvements to real property using State funds provided through this Project Partnership Agreement, an appropriate easement or other title restriction providing for floodplain preservation and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

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

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

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

- B.16. **FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER:** Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Project Partnership Agreement.
- B.17. **FUNDING RECIPIENT'S RESPONSIBILITIES:** Funding Recipient and its representatives shall:
- A. Faithfully and expeditiously perform or cause to be performed all project work as described in Overall Work Plan, and in accordance with the Budget, and Schedule (Exhibit A).
 - B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Project Partnership Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for funding.
 - C. Comply with all applicable California, federal, and local laws and regulations.
 - D. Implement the Project in accordance with applicable provisions of the law.
 - E. Fulfill its obligations under the Project Partnership Agreement and be responsible for the performance of the Project.
 - F. Obtain any and all permits, licenses, and approvals required for performing any work under this Project Partnership Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
 - G. Be solely responsible for design, construction, and operation and maintenance of projects within the Overall Work Plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
 - H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.
- B.18. **GOVERNING LAW:** This Project Partnership Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- B.19. **INDEMNIFICATION:** Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
- B.20. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Project Partnership Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- B.21. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Project Partnership Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under

this Project Partnership Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Project Partnership Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.

- B.22. **INSPECTIONS OF PROJECT BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Project Partnership Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Project Partnership Agreement with State.
- B.23. **LABOR CODE COMPLIANCE:** The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- B.24. **MODIFICATION OF OVERALL WORK PLAN:** At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibit A, which concern the budget and schedule without formally amending this Project Partnership Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Project Partnership Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Project Partnership Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.
- B.25. **NONDISCRIMINATION:** During the performance of this Project Partnership Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital/domestic partner status, gender identity, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Project Partnership Agreement.
- B.26. **OPINIONS AND DETERMINATIONS:** Where the terms of this Project Partnership Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- B.27. **PERFORMANCE BOND:** Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Civ. Code, § 9550, et seq.; Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- B.28. **PRIORITY HIRING CONSIDERATIONS:** If this Project Partnership Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions

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

- B.29. **PROHIBITED TRANSACTIONS:** On March 4, 2022, the Governor issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. The EO may be found at: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. The EO directs the Department to terminate Project Partnership Agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine that the Funding Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State shall provide the Funding Recipient advance written notice of such termination, allowing the Funding Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.
- B.30. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Project Partnership Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- B.31. **PROJECT ACCESS:** The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- B.32. **REMAINING BALANCE:** In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify the Grantee stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Grant Agreement.
- B.33. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Project Partnership Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- B.34. **RIGHTS IN DATA:** Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Project Partnership Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Project Partnership Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- B.35. **SEVERABILITY:** Should any portion of this Project Partnership Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Project Partnership Agreement shall continue as modified.
- B.36. **SUSPENSION OF PAYMENTS:** This Project Partnership Agreement may be subject to suspension of payments or termination, or both if the State determines that:
- A. Funding Recipient, its contractors, or subcontractors have made a false certification, or
 - B. Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Project Partnership Agreement.
- B.37. **SUCCESSORS AND ASSIGNS:** This Project Partnership Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Project Partnership Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient

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shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

- B.38. **TERMINATION BY FUNDING RECIPIENT:** Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.
- B.39. **TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 18(b), the State may terminate this Project Partnership Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Project Partnership Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 18.
- B.40. **TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on 30 days' advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- B.41. **TRAVEL:** Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Project Partnership Agreement. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources for excluded employees. These rates may be found at: <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- B.42. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- B.43. **TIMELINESS:** Time is of the essence in this Project Partnership Agreement.
- B.44. **UNION ORGANIZING:** Funding Recipient, by signing this Project Partnership Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Project Partnership Agreement. Furthermore, Funding Recipient, by signing this Project Partnership Agreement, hereby certifies that:
- A. No State funds disbursed by this Project Partnership Agreement will be used to assist, promote, or deter union organizing.
 - B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Project Partnership Agreement to show those funds were allocated to that expenditure.
 - C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- B.45. **VENUE:** The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.
- B.46. **WAIVER OF RIGHTS:** None of the provisions of this Project Partnership Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Project Partnership Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Project Partnership Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

Exhibit C: QUARTERLY WORK PLAN AND REPORT FORMATS

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

QUARTERLY WORK PLANS

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

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

QUARTERLY WORK PLAN

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

PROJECT INFORMATION

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

COST INFORMATION

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

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

SCHEDULE INFORMATION

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

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

QUARTERLY PROGRESS REPORTS

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

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

PROJECT STATUS

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

PROJECT INFORMATION

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

COST INFORMATION

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

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

SCHEDULE INFORMATION

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

Exhibit D
OPERATION AND MAINTENANCE AGREEMENT
BETWEEN
The Central Valley Flood Protection Board
AND
Yolo County Natural Resources Department
FOR
Huff's Corner Levee Raise and Channel Reconfiguration

This Operation and Maintenance Agreement ("O&M Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board") and the Yolo County Natural Resources Department ("Funding Recipient") on this 29 day of May, 2019 in view of the following circumstances:

1. The Huff's Corner Levee Raise and Channel Reconfiguration ("Project") is a project funded in part by the Flood System Repair Project and is a modification of a part of the State-Federal Flood Control System known **the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.**
2. State funding has become available for the Project:
 - The voters of California approved Proposition 1E on November 7, 2006, making available bond funds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources, has solicited applications for funding for the Flood System Repair Project ("FSRP").
 - The Funding Recipient has signed a Project Agreement. This Project Agreement is between the State of California Department of Water Resources and Yolo County Natural Resources Department for the Huff's Corner Levee Raise and Channel Configuration ("Project Agreement").
 - The Project Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, according to the current Operation and Maintenance Manual(s) ("O&M") of Projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.
 - The Department has agreed to enter into the Project Agreement on the condition that the Funding Recipient enters into this O&M Agreement under which the Board will oversee O&M for the Project, as defined herein, for the State, as part of the State Plan of Flood Control.
3. It is not expected that the federal government will provide funding for the Project at this time, but in anticipation that federal funds may become available eventually:
 - The parties agree that this O&M Agreement may be superseded by one or more agreements acceptable to the USACE, the Department, and the Board that gives satisfactory assurances to the federal government, the Department, and the Board that the required local cooperation will be furnished in connection with the Project.

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

NOW, THEREFORE, IT IS HEREBY AGREED:

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

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

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

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

"Funding Recipient" means Yolo County Natural Resources Department, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Project Agreement and this O&M Agreement.

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

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

"O&M Agreement" means this agreement between the Board and the Yolo County Natural Resources Department for O&M of the Project.

"Overall Work Plan" means the plan described in the Project Agreement in Paragraph 23(a) and Exhibit A-1.

"Post Construction Performance Reports" means the report(s) required by Project Agreement in Paragraph 23(e) and further described in Project Agreement Exhibit C.

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

"Project Agreement" means that certain agreement between the Department and the Yolo County Natural Resources Department for the Huff's Corner Levee Raise and Channel Configuration dated **March 2019**.

"Project Completion Report" means the report required by Project Agreement Paragraph 23(d) and further described in Project Agreement Exhibit G.

"Project Site" means the location of the Project.

"State" means the State of California, acting by and through the Board.

"State Plan of Flood Control" means the state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

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SECTION I: Obligations of the Funding Recipient

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

1. The Funding Recipient hereby accepts responsibility for the Project.
2. To perform O&M for the Project, including all mitigation features of the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Funding Recipient to perform O&M for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
3. To 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 Project for which the State may be held liable and any claims based upon inverse condemnation.
4. If the Funding Recipient has failed or refused to perform the obligations set forth in this O&M Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

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

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

B. Specific Obligations Arising as a Result of the Project

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1. If the Project Agreement requires the Funding Recipient to develop an Interim Standard Operation and Maintenance Manual, Funding Recipient shall:
 - (a) develop an Interim Standard Operation and Maintenance Manual as so required; and
 - (b) be responsible for O&M of the Project or functional portion thereof as further explained in: (1) the Interim Standard Operation and Maintenance Manual for the Project and any applicable Supplement to the Interim Standard Operation and Maintenance Manual for the Project and (2) shall annually update the Interim Operation and Maintenance Manual for the Project prepared pursuant to the Project Agreement. The Funding Recipient acknowledges that changes to the Interim Standard Operation and Maintenance Manual may be made by the State and the USACE before the document becomes final and that the Funding Recipient shall be responsible for O&M in accordance with any revised version of the Operation and Maintenance Manual for the Project or any Supplement to the Operation and Maintenance Manual.

2. If the Project Agreement requires the Funding Recipient to develop a Safety Plan, Funding Recipient shall:
 - (a) develop a Safety Plan as so required;
 - (b) annually update the safety plan for the Project prepared pursuant to the Project Agreement; and
 - (c) use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.

3. The Funding Recipient shall provide reports to the Board as follows: (1) The Funding Recipient shall provide copies to the Board of the Project Completion Report and Post Construction Performance Reports prepared pursuant to the Project Agreement; and (2) If requested to do so by the Board, the Funding Recipient shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Wolk), 2007 California Statute 366 (to be codified at California Water Code § 9140(a)) that pertain to the Project. The Board may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities under this O&M Agreement.

SECTION II: Hazardous Substances

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

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

- B. That in the event hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the

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funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this O&M Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate and maintain the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of Section II of the Project O&M Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

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

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

SECTION IV: Procedures for Reimbursing the State

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

SECTION V: Disputes

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

SECTION VI: Obligation of Future Appropriations

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

SECTION VII: Term of Agreement; Amendment

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

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

SECTION VIII: Notices

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

If to Yolo County Natural Resources Department:

Elisa Sabatini, Manager of Natural Resources
625 Court Street, Room 202
Woodland, CA 95695

If to the Board:

Ms. Leslie Gallagher
Acting Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 151
Sacramento, CA 95821

With a copy to:

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

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

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

SECTION IX: Standard Conditions

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

SECTION X: Authority

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

(Remainder of page intentionally left blank)

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Yolo County Natural Resources Department

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

Central Valley
Flood Protection Board

By [Signature]
Name Leslie M. Gallagher
Title Exec. Off.
Date 5.29.19

Approved as to Legal Form
And Sufficiency

By [Signature]
Name Kanwanjit Dua
Title Board Counsel
Date 5/21/19

Yolo County Natural Resources Department

By [Signature]
Name Patrick Blacklock
Title County Administrator
Date 4-23-19

Approved as to Legal Form
And Sufficiency

By [Signature]
Name Philip J. Pogledich
Title Cons. Counsel
Date 4/22/19

Exhibit D-1: STANDARD CONDITIONS

1. **GOVERNING LAW:** This O&M Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this O&M Agreement.
3. **AMENDMENT:** This O&M Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This O&M Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this O&M Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this O&M Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this O&M Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this O&M Agreement, and State may take any other action it deems necessary to protect its interests, after complying with Paragraph V of the O&M Agreement.
6. **NO THIRD PARTY RIGHTS:** The Parties to this O&M Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this O&M Agreement, or of any duty, covenant, obligation or undertaking established herein.
7. **OPINIONS AND DETERMINATIONS:** Where the terms of this O&M Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
8. **SUIT ON O&M AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this O&M Agreement.
9. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this O&M Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
10. **SEVERABILITY:** Should any portion of this O&M Agreement be determined to be void or unenforceable, such shall be severed from the whole and the O&M Agreement shall continue as modified.
11. **WAIVER OF RIGHTS:** None of the provisions of this O&M Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this O&M Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the O&M Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
12. **TERMINATION FOR CAUSE:** The State may terminate this O&M Agreement should Funding Recipient fail to perform the requirements of this O&M Agreement at the time and in the manner herein provided or in the event of a default under Paragraph 21 of the Project Agreement.

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Yolo County Natural Resources Department

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

Resolution No. 19-45

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO, STATE OF CALIFORNIA, RESOLUTION ACCEPTING STANDARD CONDITIONS.

Resolved by the **Board of Supervisors** of the **County of Yolo** that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to **Yolo County, Natural Resources Division** by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: **Huff's Corner Levee Raise & Channel Reconfiguration** 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 the **County of Yolo** to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of **Huff's Corner Levee Raise & Channel Reconfiguration**.

Therefore, the **County Administrator** of the **County of Yolo**, or his/her designee, is hereby authorized and directed to sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted this 9th day of April, 2019 by the following vote:

AYES: Sandy, Provenza, Chamberlain, Villegas, Saylor

NOES: None

ABSENT: None

ABSTAIN: None



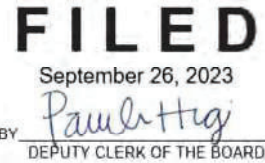
Don Saylor, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk
Board of Supervisors

By: 
Deputy  (Seal)

Approved as to Form:
Philip J. Pogledich, County Counsel

By: 
Philip Pogledich, County Counsel



RESOLUTION NO. 23- 139

Resolution of the Yolo County Board of Supervisors Accepting Funds from the California Department of Water Resources for the Huff's Corner Levee Raise & Channel Reconfiguration Project – Phase II, and Delegating Authority to the Director of Community Services and Manager of Natural Resources to Perform Various Project Related Administrative Actions on Behalf of the Board.

WHEREAS, Yolo County (“County”) independently operates, maintains, and repairs the Huff’s Corner Levee System, which is on the right bank of Cache Creek, approximately 2,700 feet upstream from Interstate 5, adjacent to County Road 18 in Woodland, California; and

WHEREAS, on April 9, 2019, the County Board of Supervisors adopted Resolution No. 19-46 accepting funds from the California Department of Water Resources (“DWR”) for a State-Federal Flood Control System Modification Program project titled: Huff’s Corner Levee Raise & Channel Reconfiguration Project (“Project”); and

WHEREAS, on August 7, 2019, the County and DWR executed the funding agreement, Agreement No. 2019-FSRP-NA21-01 (“Project Agreement”), for the Project; and

WHEREAS, the Project Agreement’s scope of work involves raising a portion of the Huff’s Corner Levee to its original design height and reconfiguring the Cache Creek channel to control erosional forces acting against the levee; and

WHEREAS, to-date the County has completed the following activities under the Project Agreement: development of 100% designs for the levee raise and the in-channel reconfiguration components of the project; approval of the required California Environmental Quality Act documents; execution of all applicable local, state, and federal permits; and completion of the in-channel reconfiguration portion of the Project; and

WHEREAS, in December 2020, County staff and its consultant team notified DWR that the Project Agreement would not have the funding capacity to complete the levee raise portion of the Project due to unforeseen costs associated with construction, environmental mitigation, and securing land acquisitions/Right-of-Way; and

WHEREAS, in January 2023, DWR was able to secure additional monies to ensure the Project is constructed in its entirety; and

WHEREAS, on February 21, 2023, the County Board of Supervisors adopted Resolution No. 23-23 requesting a new Funding Agreement from DWR for Phase II of the Project; and

WHEREAS, in August 2023, DWR presented the County a new agreement, in the amount of \$2,477,500, to fund Phase II of the Project (Project Partnership Agreement, Agreement No. 2023-FSRP2021-YCNR-01); and

WHEREAS, the cost share of the new agreement is split 90% State (\$2,229,750) and 10% Local (\$247,750).

NOW, THEREFORE, the Yolo County Board of Supervisors hereby resolves that:

1. The foregoing recitals are true and correct;
2. Pursuant and subject to all of the terms and provisions of the Flood System Repair Program, that the funds awarded to the County of Yolo by the California Department of Water Resources for a State-Federal Flood Control System Modification Program for the Huff's Corner Levee Raise & Channel Reconfiguration – Phase II are hereby accepted;
3. The Director of Community Services, or the Director's designee, is hereby authorized and directed to sign a Project Partnership Agreement, and any amendment thereof, with DWR and to take any other actions necessary to accept and utilize the DWR grant funds; and
4. The Manager of Natural Resources, or their designee, is hereby authorized and directed to sign requests for disbursements to be made under the Project Partnership Agreement, and to submit any required documents, invoices, and reports required by the Project Partnership Agreement.


PASSED AND ADOPTED by the Yolo County Board of Supervisors this 26th day of September 2023, by the following vote:

AYES: Frerichs, Provenza, Barajas, Villegas.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.


 Oscar E. Villegas, Chair
 Yolo County Board of Supervisors

ATTEST:
 Julie Dachtler, Senior Deputy Clerk
 Yolo County Board of Supervisors

APPROVED AS TO FORM:
 Philip J. Pogledich, County Counsel

By: 
 Deputy (Seal)

By: 
 Kimberly E. Hood, Chief Asst. County Counsel

Exhibit F: LAND ACQUISITION PROCESS REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Final transactions will be reviewed and approved by State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit G: EARLY PARTIAL RELEASE OF CERTAIN WITHHELD FUNDS

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

A. Funds Eligible for Early Partial Release

Several provisions of the Project Partnership Agreement authorize withholding.

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit H: PROJECT OR ELEMENT/FEATURE CLOSEOUT

I. GENERAL

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

II. PROJECT CLOSEOUT

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

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

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

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3. Application for seeking Federal credit

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

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Exhibit H-1: **RESERVED**

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

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

List of Documents for Audit

Internal Controls

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

State Funding:

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

Contracts:

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

Invoices:

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

Cash Documents:

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

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.

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3. Bridging documents that tie the general ledger to requests for Project Partnership Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

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

Project Files:

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

Funding Match Documentation

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

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

EXHIBIT D
INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements:

1. Minimum Scope of Insurance – coverage shall be at least as broad as the latest version of the following:

a. Commercial General Liability: Insurance Services Office form CG 000. The policy shall not contain any exclusions contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for 1) Contractual liability such as ISO CG 24 26 or 21 29; or 2) cross liability or suits by one insured against another.

b. Automobile Liability: Insurance Services Office form CA 00 01, code 1- Any auto or including Hired and Non-Owned vehicles.

c. Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employers' Liability.

d. Professional Liability (Errors and Omissions) *(If applicable, see below)*

2. Minimum Limits (as applicable) – Insurance coverage shall be with limits not less than the following:

a. Commercial General Liability – \$2,000,000/occurrence and \$4,000,000 annual aggregate or an aggregate of \$2,000,000 that applies separately to this project (ISO CG 25 03 or 25 04).

b. Automobile Liability – \$1,000,000 per accident for bodily injury and property damage.

c. Professional Liability/Malpractice/Errors and Omissions – \$2,000,000 per occurrence and annual aggregate *(If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, or other professional contractors, such as computer and software designers the contractor must provide this insurance. If not, then this requirement automatically does not apply.)*

d. Workers' Compensation – Statutory Limits/Employers' Liability – \$1,000,000/accident for bodily injury or disease *(If no employees, this requirement automatically does not apply.)*

3. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

4. Other Insurance Provisions

a. **Additional Insured Status** – The County, its officers, agents, employees, and volunteers shall be named as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or in behalf of the Contractor including, materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form or an endorsement to the Contractor’s insurance (at least as broad as CG 20 10 11 85 or if not available, through the addition of both CG 20 37 and one of the following: CG 20 10, CG 20 26, or CG 20 33). [NOTE: Evidence of additional insured is needed as a separate endorsement or comparable policy language due to wording on the certificate negating any additional coverage listed writing in the description box.]

b. **Primary Coverage** – The Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the County’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

c. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be cancelled, except with 30 days’ notice to the County.

d. **Waiver of Subrogation** – Contractor hereby grants to the County a waiver of any right to subrogation which any insurer of said Contractors may acquire against the County by virtue of the payment or any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

5. The limits of insurance required in this Contract may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before County’s own Insurance or self-insurance shall be called upon to protect it as a named insured.

6. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a “per occurrence” basis

unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

7. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of the Agreement.

8. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.

9. Insurance is to be placed with insurers with current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.

10. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connect with this Agreement.

11. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

B. Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original policies or endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by the specifications.

C. During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage

required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor/and or Contractor shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and General Contractor/and or Contractor will provide proof of compliance to the County of Yolo. (Coverage can be provided in the form or an endorsement to the Contractor's insurance (at least as broad as CG 20 38 for operations and CG 20 40 for completed operations).

E. Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the County at its sole discretion may purchase the equal amount of coverage required and the cost will be paid by Contractor.

EXHIBIT E

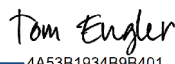
WORKERS' COMPENSATION CERTIFICATE

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor, both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

CONTRACTOR

DocuSigned by:

4A53B1934B9B401...

Signature

Tom Engler

Name

Principal

Title