

ATTACHMENT A

STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

Agreement Number: 460000011626

FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND
FRESNO COUNTY

FOR DROUGHT EMERGENCY WATER SUPPLY PROJECT OVERSIGHT SERVICES

A PART OF THE EMERGENCY DROUGHT FUNDING ASSISTANCE PROGRAM
PURSUANT TO
ITEM 3860-101-0001 OF THE BUDGET ACT OF 2014

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES)
AND
FRESNO COUNTY
4600011626**
ITEM 3860-101-0001 OF THE BUDGET ACT OF 2014

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

- 1) **PURPOSE.** State shall provide funding from Item 3860-101-0001 of the Budget Act of 2014 to Funding Recipient to assist in financing the Water Supply Project Oversight Services, herein referred to as the "Project."
- 2) **TERM OF FUNDING AGREEMENT.** The term of this Funding Agreement begins on the date this Funding Agreement is executed by State, and terminates on August 18, 2018. Execution date is the date the State signs this Funding Agreement indicated on page 8.
- 3) **FUNDING AMOUNT.** The maximum amount payable by the State under this Agreement shall not exceed \$100,000
- 4) **FUNDING RECIPIENT'S RESPONSIBILITY.** Funding Recipient and its representatives shall:
 1. Faithfully and expeditiously perform or cause to be performed all Project work as described in Exhibit A (Work Plan) and in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).
 2. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for financing.
 3. Comply with all applicable California laws and regulations.
 4. Implement the Project in accordance with applicable provisions of the law.
 5. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
- 5) **BASIC CONDITIONS.** State shall have no obligation to disburse money for a project under this Funding Agreement until Funding Recipient has satisfied the following conditions:
 1. For the term of this Funding Agreement, Funding Recipient submits timely Quarterly Progress Reports as required by Paragraph 13, "Submission of Reports."
 2. Funding Recipient submits all deliverables as specified in Paragraph 13 of this Funding Agreement and in Exhibit A.
 - a. Prior to the commencement of construction or implementation activities, Funding Recipient shall submit the final plans and specifications certified by a California Registered Professional as to compliance for each approved project as listed in Exhibit A of this Funding Agreement.

- b. Prior to any work that is subject to the California Environmental Quality Act (CEQA) and/or environmental permitting shall not proceed under this Funding Agreement until the Funding Recipient has provided the State's Project Manager, identified in Paragraph 17, a copy of any necessary environmental permits, and a copy of the CEQA Notice of Exemption filed with the State Clearinghouse.

6) **DISBURSEMENT OF FUNDS.** State will disburse to Funding Recipient the amount approved. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations. Any and all money disbursed to Funding Recipient under this Funding Agreement and any and all interest earned by Funding Recipient on such money shall be used solely to pay Eligible Project Costs.

7) **ELIGIBLE PROJECT COST.** Funding Recipient shall apply State funds received only to eligible Project Costs in accordance with applicable provisions of the law and Exhibit B. Eligible Project Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and Project construction. Reasonable administrative expenses may be included as Project Costs and will depend on the complexity of the project preparation, planning, coordination, construction, acquisitions, implementation, and maintenance. Costs that are not eligible for reimbursement include but are not limited to the following items:

1. Costs, other than those noted above, incurred prior to August 1, 2016.
2. Operation and maintenance costs, including post Project performance and monitoring costs.
3. Purchase of equipment not an integral part of the Project.
4. Establishing a reserve fund.
5. Monitoring and assessment costs for efforts required after Project is complete.
6. Replacement of existing funding sources for ongoing programs.
7. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
8. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a Project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the execution date of this Agreement.
9. Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Funding Agreement, the State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs.
10. Overhead not directly related to Project costs. ✓

Any and all costs submitted pursuant to this Funding Agreement shall only be for the tasks set forth herein. Any eligible costs for which the Funding Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of funds and/or termination of this Agreement

requiring the repayment of all funds disbursed hereunder. Additionally, suspected incidents of the misuse of public funds may be referred to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

8) METHOD OF PAYMENT. After the disbursement requirements in Paragraph 5 "Basic Conditions" are met, State will disburse the whole or portions of State funding to Funding Recipient, following receipt from Funding Recipient via US mail or Express mail delivery of a "wet signature" invoice for costs incurred, including Cost Share, and timely Quarterly Progress Reports as required by Paragraph 13, "Submission of Reports." Payment will be made no more frequently than monthly, in arrears, upon receipt of an invoice bearing the Funding Agreement number. State will notify Funding Recipient, in a timely manner, whenever, upon review of an invoice, State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to State. Funding Recipient may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by Funding Recipient shall include the following information:

1. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
2. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a project during the period identified in the particular invoice for the implementation of the Project.
3. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - a. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - b. Invoices must be itemized based on the categories specified in Exhibit B. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - c. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - d. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as depicted in Paragraph 3, "Funding Amount."
 - e. Original signature and date (in ink) of Funding Recipient's Project Representative. Submit the original "wet signature" copy of the invoice form to the State's Project Manager identified in Paragraph 17.
- 9) WITHHOLDING OF DISBURSEMENTS BY STATE. If State determines that the Project is not being implemented in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply with the provisions of this Funding 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 State funding and take any other action that it deems necessary to protect its interests. Where a

portion of the State funding has been disbursed to the Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 10, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by State. State may consider Funding Recipient's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Paragraph 10, "Default Provisions." If State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to this paragraph, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient and the State shall no longer be required to provide funds under this Funding Agreement and the Funding Agreement shall no longer be binding on either party.

10) DEFAULT PROVISIONS. Funding Recipient will be in default under this Funding Agreement if any of the following occur:

1. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
2. Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement;
3. Failure to operate or maintain project in accordance with this Funding Agreement.
4. Failure to make any remittance required by this Funding Agreement.
5. Failure to submit timely progress reports.

Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:

1. Declare the funding be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
2. Terminate any obligation to make future payments to Funding Recipient.
3. Terminate the Funding Agreement.
4. Take any other action that it deems necessary to protect its interests.

11) PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Funding Recipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances. Funding Recipient shall provide copies of permits and approvals to State.

12) RELATIONSHIP OF PARTIES. Funding Recipient is solely responsible for design, construction, and operation and maintenance of projects within the work plan. Review or approval of plans, specifications, bid documents, or other 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 Funding Agreement.

13) **SUBMISSION OF REPORTS.** The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager identified in Paragraph 17. If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report is a requirement for the release of any funds retained for such project.

1. **Quarterly Progress Reports:** Funding Recipient shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be submitted to the State's Project Manager. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipient's activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than one quarter (3 months) after the execution of the agreement with future reports then due on successive three-month increments based on the invoicing schedule and this date.
2. **Project Completion Reports:** Funding Recipient shall submit to State certification of final Project completion by a registered professional, consistent with Standard Condition D.16, "FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL". A Department of Water Resources (DWR) "Certification of Project Completion" form will be provided by the State.

14) **OPERATION AND MAINTENANCE OF PROJECT.** For the useful life of construction and implementation projects and in consideration of the funding made by State, Funding Recipient agrees to ensure or cause to be performed the commencement and continued operation of the Project, and shall ensure or cause the Project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. Funding Recipient or their successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Funding Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include 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. Refusal of Funding Recipient to ensure operation and maintenance of the projects in accordance with this provision may, at the option of State, be considered a breach of this Funding Agreement and may be treated as default under Paragraph 10, "DEFAULT PROVISIONS."

15) **NOTIFICATION OF STATE.** Funding Recipient shall promptly notify State, in writing, of the following items:

1. Events or proposed changes that could affect the scope, budget, or work performed

under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.

2. Any public or media event publicizing the accomplishments and/or results of this Funding Agreement and provide the opportunity for attendance and participation by State's representatives. Funding Recipient shall make such notification at least 14 calendar days prior to the event.
3. Final inspection of the completed work on the Project by a Registered Professional, in accordance with Standard Condition D.16, "FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL." Funding Recipient shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.

16) **NOTICES.** Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing. Notices may be transmitted by any of the following means:

1. By delivery in person.
2. By certified U.S. mail, return receipt requested, postage prepaid.
3. By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
4. By electronic means.
5. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

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

Department of Water Resources
Arthur Hinojosa, P.E.
Chief, Division of Integrated Regional
Water Management
901 P Street, Room 202A
Sacramento, CA 95814
Phone: (916) 653-4736
Email: Arthur.Hinojosa@water.ca.gov

County of Fresno
Public Works and Planning
Amina Flores-Becker
Special Districts Administrator
2220 Tulare Street, 6th Floor
Fresno, CA 93721
Phone: (559) 600-4319
Email: afloresbecker@co.fresno.ca.us

Direct all inquiries to the Project Manager:

Department of Water Resources
Laurence Sanati, P.E.
1416 9th Street, 11th Floor
Sacramento, CA 95814
Phone: (916) 651-7003
Email: Laurence.Sanati@water.ca.gov

County of Fresno
Public Works and Planning
Sebastian Artal, P.E.
2220 Tulare Street, 7th Floor
Fresno, CA 93721
Phone: (559) 600-4512
Email: sartal@co.fresno.ca.us

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

18) STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit A – Work Plan
Exhibit B – Budget
Exhibit C – Schedule
Exhibit D – Standard Conditions
Exhibit E – Report Formats and Requirements
Exhibit F – State Audit Document Requirements for Funding Recipients

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

STATE OF CALIFORNIA

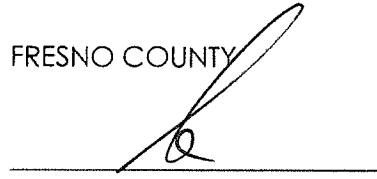
DEPARTMENT OF WATER RESOURCES



Arthur Hinojosa, P.E.
Chief, Division of Integrated Regional
Water Management

Date 1/10/17

FRESNO COUNTY



Steven E. White
Director, Public Works and Planning

Date 1/10/17

Approved as to Legal Form and Sufficiency



Robin Brewer, Assistant Chief Counsel
Office of Chief Counsel
Date 10/5/16

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg
County Counsel

By: Daniel C. Cederborg
Deputy

APPROVED AS TO ACCOUNTING
FORM
Oscar J. Garcia C.P.A
Auditor-Controller/ Treasurer-Tax
Collector

By: Oscar J. Garcia
Deputy

FOR ACCOUNTING USE ONLY

Fund:	0820
Subclass	16000
Org. No	9172
Account	8400
Program	91317

Exhibit A

WORK PLAN

Scope of Work

Project Description

The intent of this funding agreement is to provide Fresno County oversight and services for the Cantua Creek/El Porvenir drought emergency water supply project in Fresno County.

Oversight and services will include the review of engineering plans, specifications, feasibility studies, participation in bi-weekly meetings, and coordination of any issues between the City, County and State related to drought emergency water supply projects.

Work Plan

Task 1 – Engineering Document Review

This task includes review and comment on engineering plans, specifications, feasibility studies, and any other engineering documents related to the Cantua Creek/El Porvenir drought emergency water supply project. Issues identified during the review process will be documented and a resolution will be developed working with the engineering firm or contractor who submitted the plans. Also includes related meeting attendance as necessary.

Deliverables: Check-Sets for engineering documents reviewed, sign-in sheet, minutes

Task 2 – Project Reporting

This task includes quarterly and annual reporting to the various funding sources of the progress of each project.

Deliverables: Quarterly and annual project reports

Task 3 – Project Accounting

This task includes review of invoices, payment of contractor invoices, and preparation of funds requests to State agencies.

Deliverables Copies of invoices, warrants, funds requests

Task 4 – General Administration

This task includes preparation of counsel requests, board agenda items, responding to inquiries from community members, DWR – County correspondence and other work tasks associated with projects.

Deliverables: Copies of documents as requested

Task 5 – Permits & Inspections

This task includes the issuance of permits and associated inspection by Fresno County. Permits will be issued for any work within County right of way and inspections as required to ensure construction activities abide with County ordinances and specifications.

Deliverables: Permits and inspection services as required.

Exhibit B

BUDGET

Task No.	Task Description	Estimated Cost
1	Engineering Document Review	\$ 12,500
2	Project Reporting	\$ 12,500
3	Project Accounting	\$ 12,500
4	General Administration	\$ 12,500
5	Permits & Inspections	\$ 50,000
		Total
		\$ 100,000

Exhibit C
SCHEDULE

Task No.	Description of Tasks	Start	Finish
1	Engineering Document Review	8/11/2016	8/11/2018
2	Project Reporting	8/11/2016	8/11/2018
3	Project Accounting	8/11/2016	8/11/2018
4	General Administration	8/11/2016	8/11/2018
5	Permits & Inspections	8/11/2016	8/11/2018

Exhibit D

STANDARD CONDITIONS

D.1) ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

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

D.2) ACKNOWLEDGEMENT OF CREDIT: Funding Recipient shall include appropriate acknowledgement of credit to the State when promoting the Project or using any data and/or information developed under this Funding Agreement.

D.3) AMENDMENT: This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

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

D.5) APPROVAL: This Agreement is of no force or effect until signed by all parties to the agreement. Funding Recipient may not submit invoices or receive payment until all required signatures have been obtained.

D.6) AUDITS: State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any

remedies provided in Paragraph 10 or take any other action it deems necessary to protect its interests.

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

D.7) **CEQA:** Activities funded under this Funding Agreement must be in compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code §21000 et seq.) including the determination that the Project is exempt. Information on CEQA may be found at the following webpages:

Environmental Information: http://www.opr.ca.gov/m_ceqa.php

State Clearinghouse Handbook: http://opr.ca.gov/docs/SCH_Handbook_2012.pdf

D.8) **CHILD SUPPORT COMPLIANCE ACT:** For any Funding Agreement in excess of \$100,000, 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 Chapter 8 (commencing with § 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

D.9) **CLAIMS DISPUTE:** Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.

D.10) **COMPETITIVE BIDDING AND PROCUREMENTS:** Funding Recipient shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

D.11) **COMPUTER SOFTWARE:** Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

D.12) **CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure

provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.

D.13) **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.

D.14) **DISPOSITION OF EQUIPMENT:** Funding Recipient shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.

D.15) **DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
- b) Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) 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(a)(3), that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 - i) Will receive a copy of Funding Recipient's drug-free policy statement, and
 - ii) Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

D.16) **FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer or Geologist that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement.

D.17) FUNDING RECIPIENT COMMITMENTS: Funding Recipient accepts and agrees to comply with all terms, provisions, conditions and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Funding Recipient in the application, documents, amendments, and communications filed in support of its request for funding.

D.18) GOVERNING LAW AND VENUE: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. 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 Fresno, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.

D.19) INDEMNIFICATION: Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.

D.20) INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

D.21) INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.

D.22) INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.

D.23) LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all applicable 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 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>. Additionally, the Funding Recipient is aware and in compliance with Labor Code requirements set forth in Labor Code, title 4, division 4 (commencing with section 3700) regarding workers' compensation and insurance.

D.24) MODIFICATION OF OVERALL WORK PLAN: At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibit A which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.

D.25) NONDISCRIMINATION: During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission are set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

D.26) OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

D.27) PERFORMANCE AND ASSURANCES: Funding Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the Scope of Work and to apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law.

D.28) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its

obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

D.29) REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

D.30) RETENTION: The State, at its discretion, may withhold ten percent (10%) of the funds requested by the Funding Recipient for reimbursement of Eligible Project Costs until the Project is completed and Final Report is approved. Withheld funds may be released upon completion of milestones identified in the Scope of Work.

D.31) RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

D.32) SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.

D.33) SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

- a) Funding Recipient, its contractors, or subcontractors have made a false certification, or
- b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.

D.34) SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

D.35) 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.

D.36) TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 10, the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in

the manner herein, provided including but not limited to reasons of default under Paragraph 10.

- D.37) TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 days advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.38) THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.39) TIMELINESS: Time is of the essence in this Funding Agreement.
- D.40) TRAVEL: Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://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 by the Funding Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- D.41) WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

Exhibit E

REPORT FORMATS AND REQUIREMENTS

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

PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information.

PROJECT STATUS

For each project, describe the work performed during the time period covered by the report including but not limited to:

PROJECT INFORMATION

- Legal matters
- Engineering Evaluations
- Environmental matters
- Status of permits, rights-of-way, rights of entry, 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
- Estimate the percentage completion of the overall Project
- Identify key issues that need to be resolved
- Photos documenting progress

COST INFORMATION

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

SCHEDULE INFORMATION

- A schedule showing actual progress versus 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 Funding Agreement and a revised schedule, by task, if changed from latest reported schedule

Exhibit F

STATE AUDIT DOCUMENT REQUIREMENTS FOR FUNDING RECIPIENTS

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

State Audit Document Requirements

Internal Controls

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

State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all 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 Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.

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

Accounting Records:

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

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

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

Project Files:

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