

**FUNDING AGREEMENT BETWEEN
THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES)
AND
RECLAMATION DISTRICT 2035**

2023-FMAP-RD203501

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the Reclamation District 2035, a local flood maintaining agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient," which parties do hereby agree as follows:

1. **PURPOSE.** State shall provide funding from the Budget Act of 2022 to Funding Recipient to assist in financing operations and maintenance activities as set forth in Exhibit A (Project).
2. **TERM OF FUNDING AGREEMENT.** The term of this Funding Agreement begins on the date this Funding Agreement is initially executed by State, through final plus three (3) years unless otherwise terminated or amended as provided in this Agreement. The work window covered by this Agreement begins January 1, 2023 and ends December 31, 2023. Invoices for this work shall be submitted no later than April 30, 2024.
3. **FUNDING AMOUNT.** The maximum amount payable by the State under this Agreement shall not exceed \$139,000.
4. **BASIC CONDITIONS.** State shall have no obligation to disburse money under this Funding Agreement until Funding Recipient has satisfied the following conditions:
 - A. Funding Recipient provides sufficient record for operations and maintenance activities and actual expenditures, as stated in their submittal package.
 - B. Funding Recipient submits a new Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) Assurance Agreement executed with the Central Valley Flood Protection Board for the Funding Recipient's entire jurisdiction.
 - C. For the term of this Funding Agreement, Funding Recipient submits timely Quarterly Progress Reports as required by Paragraph 10, "Submission of Reports."
 - D. Funding Recipient submits all deliverables as specified in Paragraph 10 of this Funding Agreement and in Exhibit A.
 - E. Prior to the commencement of implementation activities, for work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Funding Agreement until the following actions are performed:
 - i. Funding Recipient submits to the State all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - ii. Documents that satisfy the CEQA process are received by the State,
 - iii. State has completed its CEQA compliance review as a Responsible Agency, and
 - iv. Funding Recipient receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal.

State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Funding Recipient must also demonstrate that it has complied with all applicable requirements of the National

Environmental Policy Act (NEPA) by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to implementation.

5. **DISBURSEMENT OF FUNDS.** State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or State laws, rules, or regulations. Any and all money disbursed to Funding Recipient under this Funding Agreement shall be deposited in a separate account and shall be used solely to pay Eligible Costs.
6. **ELIGIBLE COSTS.** Funding Recipient shall apply State funds received only to eligible Costs in accordance with applicable provisions of the law and Exhibit B. Eligible Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, permit fees, preparation of environmental documentation, environmental mitigations, monitoring, and maintenance activities. Only work performed after the execution of this Agreement shall be eligible for reimbursement.

Unless otherwise noted, costs that are not eligible for reimbursement with State funds cannot be counted as Funding Match. Costs that are not eligible for reimbursement include but are not limited to the following items:

- A. Costs, other than those noted above, incurred prior to the execution of this Agreement.
 - B. Purchase and maintenance of general use vehicles.
 - C. Replacement of existing funding sources for ongoing programs.
 - D. Travel and per diem costs.
 - E. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
 - F. Purchase of land or interests in land other than those authorized in Exhibit A.
 - G. Purchase or construction of new facilities.
 - H. Utility costs.
 - I. Overhead and indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.
7. **METHOD OF PAYMENT.** Funds shall be disbursed to Funding Recipient after the disbursement requirements in Paragraph 4 "Basic Conditions" are met and in accordance with Exhibit B. Any funds provided in advance of actual expenditures shall be spent on Eligible Project Costs within six (6) months of disbursement from the State. Failure to provide adequate documentation on the use of any advanced funds shall constitute a material breach of this Agreement subject to the default provisions in Paragraph 9, "Default Provisions." Any funds not advanced in accordance with Exhibit B, the State will disburse to Funding Recipient, following receipt from Funding Recipient via electronic format invoice(s) for costs incurred and Quarterly Progress Reports as required by Paragraph 10, "Submission of Reports." Payment will be made no more frequently than quarterly, in arrears, upon receipt of an invoice bearing the Funding Agreement number.

Advance funds may be dispersed to Funding Recipient for eligible O&M activities as described in Exhibit B. 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:

- A. Costs incurred for work performed during the funding period identified in the particular invoice.
- B. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii. Invoices must be itemized based on the categories (i.e., tasks) specified in Exhibit B. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - iii. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as set forth in Exhibit B.
 - v. Funding Recipient or their representative shall submit invoices and quarterly reports in electronic format to the following project manager: _____
at _____.

All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Funding Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). 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 grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D.5 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

8. 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 9, 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 9, "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.

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

- A. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations;
- B. Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement;
- C. Failure to abide by the terms of the OMRR&R Agreement with the Central Valley Flood Protection Board.
- D. Failure to make any remittance required by this Funding Agreement including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.
- E. Failure to submit timely progress reports.
- F. Failure to routinely invoice State.

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

- A. Declare the funding be immediately repaid.
- B. Terminate any obligation to make future payments to Funding Recipient.
- C. Terminate the Funding Agreement.
- D. Take any other action that it deems necessary to protect its interests.

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

10. SUBMISSION OF REPORTS. The submittal and approval of all reports or invoices is a requirement for the successful completion of this Funding Agreement. Reports or invoices 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 or invoices shall be submitted to the State's Project Manager Via electronic mail provided. 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 verifying progress is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State of a Funding Completion Report is a requirement for the subsequent release of any funds to the Funding Recipient in any Fiscal Year.

- A. 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 via electronic mail to the address provided. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipients activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period.
- B. Closeout Report: Funding Recipient shall prepare and submit to State a Closeout Report. Funding Recipient shall submit a Closeout Report within ninety (90) calendar days of work completion. The report shall include, in part, a description of actual work done, any changes or amendments to the work plan, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project.

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

- A. Events or proposed changes that could affect the scope, budget, work performed, or schedule under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of the O&M activities will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.
- B. 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.
- C. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during implementation, the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.
- D. The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.

12. 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:

- A. By delivery in person.
- B. By certified U.S. mail, return receipt requested, postage prepaid.
- C. By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
- D. By electronic means.
- E. 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.

13. PERFORMANCE EVALUATION. Upon completion of this Funding Agreement, Funding Recipient's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Funding Recipient.

14. FUNDING AGREEMENT REPRESENTATIVES. The Funding Agreement Representatives during the term of this Funding Agreement are as follows:

Department of Water Resources

Project Representative:

Name: Jeff H. Van Gilder

Title: Senior Engineering Geologist

Mailing Address: 3310 El Camino Ave., Room 140

Sacramento, CA 95821

Phone: (916) 574-2745

Email: Jeff.VanGilder@water.ca.gov

Reclamation District 2035

Project Representative:

Name: Mike Hall

Title: General Manager

Mailing Address: 1296 E. Gibson Rd., Ste. A-361

Woodland, CA 95776

Phone: (530) 662-6200

Email: mike@conawayranch.com

Direct all inquiries to the Project Manager:

Department of Water Resources

Project Manager:

Name: _____

Title: _____

Mailing Address: _____

Phone: _____

Email: _____

Reclamation District 2035

Project Manager:

Name: Mike Hall

Title: General Manager

Mailing Address: 1296 E. Gibson Rd., Ste. A-361
Woodland, CA 95776

Phone: (916) 662-6200

Email: mike@conawayranch.com

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

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

Exhibit A – Work Plan

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Funding Recipient Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – State Audit Document Requirements and Funding Match Guidelines for Funding Recipients

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

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

RECLAMATION DISTRICT 2035

Jeremy Arrich, Division Manager

Division of Flood Management

Date _____

Mike Hall

Reclamation District 2035

Date 6/14/22

Approved as to Legal Form and Sufficiency

Robin Brewer, Assistant General Counsel

Office of General Counsel

Date _____