RECLAMATION DISTRICT 830
RESOLUTION NO. 18-01
OF THE BOARD OF TRUSTEES
OF RECLAMATION DISTRICT NO. 830
AUTHORIZING THE 2017-2018
DELTA LEVEE SUBVENTIONS PROGRAM WORK AGREEMENT

RESOLVED that the President or Secretary of Reclamation District No. 830 be and hereby is authorized to execute on behalf of this District that Agreement between the Central Valley Flood Protection Board and Reclamation District No. 830 covering participation in the Delta Levee Subventions Program pursuant to Part 9, Division 6 of the Water Code as amended by SB 34, Chapter 28, Statutes of 1988 for fiscal year 2017-2018.

CERTIFICATION

I, Chad Davisson, President of Reclamation District No. 830, do hereby certify that the above is a true and correct copy of the resolution duly adopted by the Board of Trustees of Reclamation District No. 830 on this day, February 12, 2018.

AYES, and in favor thereof, Members:	C. Davisson, D. Dal Porto and T. Zimmerman
NOES, Members:	None
ABSTAIN, Members:	None
ABSENT, Members:	None

Executed on February 12, 2018, in Oakley, California.

APPROVED

Secretary
(SEAL)

Chad Davisson
President

Delta Levee Maintenance Subventions Program
WORK AGREEMENT
Fiscal Year 2017-2018

This Agreement is entered into as of the 12th day of February, by and between **The Central Valley Flood Protection Board** of the State of California, hereinafter referred to as the "Board" and **Reclamation District No. 830,** a political subdivision of the State of California, hereinafter referred to as "Local Agency."

WHEREAS, Part 9, commencing with Section 12980 of Division 6 of the California Water Code establishes a program for State financial assistance to local agencies responsible for maintenance of nonproject and certain project levees in the Sacramento-San Joaquin Delta; and

WHEREAS, The Central Valley Flood Protection Board approved the Delta Levee Maintenance Subventions Program 2016 Guidelines, dated August 26, 2016; and

WHEREAS, Part 9 requires local agencies to enter into an agreement with the Board to perform maintenance and improvement work as approved by the Board in accordance with administrative provisions and criteria adopted by the Board; and

WHEREAS, the Local Agency has submitted and the Board has approved levee maintenance and improvement plans in accordance with those provisions and criteria; and

WHEREAS, on November 24, 1997, as required by California Water Code Sections 12307 and 78543, the Board, the Department of Water Resources, hereinafter referred to as "DWR" or "Department," the Department of Fish and Game, now known as the California Department of Fish and Wildlife (CDFW), and The Resources Agency executed Amendment No. 1 to the Memorandum of Understanding, requiring projects or plans to be consistent with a net long-term habitat improvement program in the delta; and

WHEREAS, in November, 1999, CDFW issued the "Fish and Wildlife Enhancement Guidance Document" to ensure net long-term habitat improvement; and

WHEREAS California Water Code Section 12987 provides that CDFW ensures expenditures must be consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the Delta; and

WHEREAS, the Local Agency, DWR, and CDFW agree that the Local Agency has completed or is in the process of completing all of the requirements of California Water Code Sections 12987 and 79050 in its previous agreements with the Board.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. This Agreement covers the performance, inspection, reimbursement, and cost sharing of maintenance and improvement work performed on nonproject and eligible project levees by the Local Agency from July 1, 2017 to June 30, 2018.

2. The Local Agency shall accomplish the annual routine maintenance and rehabilitation work specified in the application prior to June 30, 2018. Local Agency shall be responsible for providing a registered engineer for appropriate direction and supervision of work described in the Local Agency's application to ensure that the work complies with accepted engineering and construction practices. Increased oversight by the Local Agency's engineer is expected with regard to any levee rehabilitation work.

3. No employee, officer, employer, or agent of the Local Agency shall participate in the selection, award, or administration of a contract for which reimbursement will be sought if a conflict of interest, real or apparent, would be involved. The Local Agency shall comply with all applicable laws on conflict of interest including, but not limited to, Public Contract Code (PCC) sections 10335.5 et seq., PCC sections 10365.5 et seq., PCC sections10410 et seq., and Government Code sections 1090 et seq. and 81000 et seq.

4. The Local Agency shall be responsible for environmental compliance that may be necessary for the maintenance and improvement work covered by this Agreement including, but not limited to, compliance with the California Environmental Quality Act, the California Endangered Species Act, and obtaining a Streambed Alteration Agreement (Fish and Game Code Section 1600 et seq.) The Local Agency agrees to comply with all applicable State, federal, and local laws including, but not limited to, any environmental protection and habitat improvement required pursuant to California Water Code Section 12987. Prior to any payments to the Local Agency, pursuant to this Agreement, the Local Agency shall submit to DWR and CDFW, an acceptable habitat improvement program component which includes any mitigation and enhancement required by CDFW, which is consistent with a net long-term habitat improvement program. If a net long-term habitat improvement component is not agreed upon by the parties hereto and CDFW, then all payments made pursuant to this Agreement shall be subject to reimbursement by the Local Agency.

5. Work that is subject to the California Environmental Quality Act (CEQA) shall not proceed under this Agreement until documents that satisfy the CEQA process are received by DWR and DWR has completed its CEQA compliance review. Work that is subject to a CEQA document shall not proceed until and unless concurred with by DWR. Such concurrence is fully discretionary and shall constitute a condition precedent to any such work for which it is required. Once CEQA documentation has been completed, DWR will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

6. When reference is made herein to criteria or administrative procedures adopted by the Board, it is intended to include all addenda and supplements to said criteria or procedures.

7. Upon completion of the work agreed to be funded, the Local Agency shall submit a final claims completion report and notify DWR and CDFW for a joint inspection of the work. The Local Agency shall cooperate in the conduct of all inspections, including inspections by DWR, pursuant to California Water Code Section 12989, to monitor and ascertain compliance with and progress toward meeting the standards in the State's Flood Hazard Mitigation Plan for the Sacramento-San Joaquin Delta (DWR Office of Emergency Services, dated September 15, 1983), as updated or amended. To be eligible for reimbursement, the work shall be completed in the fiscal year for which application was made and approved.

8. In accordance with California Water Code § 9140, if Local Agency is responsible for the operation and maintenance of a project levee, or if Local Agency operates and maintains a nonproject levee that also benefits land within the boundaries of the area benefited by the project levee, Local Agency shall prepare and submit to DWR, on or before September 30th of each year, a report of information for inclusion in periodic flood management reports prepared by DWR relating to the project levee. The information shall include all of the following:

a. Information known to the Local Agency that is relevant to the condition of the project levee.
b. Information identifying known conditions that might impair or compromise the level of flood protection provided by the project levee.
c. A summary of the maintenance performed by the Local Agency during the previous fiscal year.
d. A statement of work and estimated cost for operation and maintenance of the project levee for the current fiscal year, as approved by the Local Agency.
e. Any other readily available information contained in the records of the Local Agency relevant to the condition or performance of the project levee, as determined by the Board or DWR.

9. In accordance with California Water Code § 9650, if Local Agency receives funding from the State to upgrade a project levee that protects an area in which more than 1,000 people reside, the Local Agency responsible for the project levee and any city or county, including charter cities or counties, protected by the project levee shall enter into an agreement to adopt a safety plan within two years. The safety plan shall be integrated into any other Local Agency emergency plan and shall be coordinated with the state emergency plan. The local entity responsible for the operation and maintenance of the project levee shall submit a copy of the safety plan to DWR and the Central Valley Flood Protection Board. No advances or reimbursements shall be made by the State for a levee covered by this paragraph until it receives the Agreement from all necessary entities. The safety plan shall include all of the following elements:

a. A flood preparedness plan that includes storage of materials that can be used to reinforce or protect a levee when a risk of failure exists.
b. A levee patrol plan for high water situations.
c. A flood-fight plan for the period before the state or federal agencies assume control over the flood fight.
d. An evacuation plan that includes a system for adequately warning the general public in the event of a levee failure, and a plan for the evacuation of every affected school, residential care facility for the elderly, and long-term health care facility.
e. A floodwater removal plan.
f. A requirement, to the extent reasonable, that either of the following applies to a new building in which the inhabitants are expected to be the essential service providers:
    1.) The building is located outside an area that may be flooded.
    2.) The building is designed to be operable shortly after the floodwater is removed.

10. The Local Agency, it's Engineer, contractors, subcontractors, and their respective agents and employees required for performing any work shall act in an independent capacity and not as officers, employees, or agents of the State. The Local Agency is solely responsible for planning, design, construction, maintenance, and operation of its levees. Any inspection, review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict the Local Agency's responsibility for the safety and integrity of its levees. The Local Agency shall cooperate in the conduct of any State review or inspection.

11. The Local Agency shall be responsible for compliance with competitive bidding, prevailing wage provisions, contract administration laws, and all applicable labor laws including, but not limited to, Public Contract Code Section 20920, et seq., California Water Code Section 50907; and Labor Code Section 1720 et seq. and 1770 et seq. Prior to awarding a contract for a public works project funded in whole or in part under Proposition 50, Proposition 84, or any other source of funding so requiring, the Local Agency shall adopt and enforce a labor compliance program pursuant to Labor Code Section 1771.5. The Local Agency must comply with California Labor Code Section 1773.3 (Duty to notify the California Department of Industrial Relations (DIR) when awarding a contract for a public works project. Construction work performed by Local Agency forces may be exempt from competitive bidding and shall be reimbursed pursuant to the equipment rates established by Caltrans (annual labor surcharge and equipment rental rates) and the Delta Levees Subventions Program. These equipment rental rates are available on the internet at http://www.dot.ca.gov/hq/construc/.

12. The Local Agency shall maintain records and books relating to the costs and quantities of labor and materials used, purchased, or contracted for in the performance of its levee maintenance and improvement work. The Local Agency shall maintain all receipts, accountings, books, invoices and records, pertaining to its levee work for a

period of 10 years after the work has been performed or the expenses incurred. The Board and DWR shall have full and free access at all reasonable times to these books and records with the right at any time during office hours to make copies thereof. The Board, DWR, and the California State Controller's Office shall have the right to conduct audits, from time to time, of the Local Agency's expenditures for levee maintenance and improvement, the purpose of such audits being to assure that subvention funds are being properly used, that payments are not being made under other assistance programs for the same work, and that the Local Agency is seeking the most reasonable terms in its use of State funds. The Local Agency shall cooperate fully in any such audit.

13. The Local Agency shall be eligible for reimbursement for work satisfactorily completed in accordance with the following:

a. No costs shall be reimbursed until the Local Agency has spent an average of $1,000 per mile of levee for all its nonproject and eligible project levees.

b. The Local Agency shall be reimbursed up to 75 percent of the costs incurred in excess of the $1,000 per mile of nonproject and eligible project levee. If, in any year, the total eligible costs incurred exceed the State funds available, the Board shall apportion the funds among those levees or levee segments identified by DWR as being most critical and beneficial, considering the needs of flood control, water quality, recreation, navigation, habitat improvements, and fish and wildlife.

c. The Local Agency acknowledges that pursuant to California Water Code Section 12986, DWR must require either the Local Agency or an independent financial consultant to provide initial information regarding the agency's ability to pay for the cost of levee maintenance or improvement, and based on that initial information, DWR may require the Local Agency or an independent financial consultant to prepare a comprehensive study on the Local Agency's ability to pay. The Local Agency agrees to prepare the comprehensive study if so requested by DWR, with DWR paying a maximum of 75 percent and the Local Agency paying a minimum of 25 percent of the cost of the study, subject to a later determination that the Local Agency had the ability to pay a larger share of the study cost. If the Local Agency at the time of the execution of this Agreement does not contain Urban Development, as defined in this paragraph, then a comprehensive study shall not be required, unless there is either a substantial change in the use of land within the Local Agency or substantial increase in the revenue generating capability of the lands within the Local Agency. As used in this Agreement, the term Urban Development shall mean the designation by the County Assessor of 10 percent or more of the land area within the District for residential land use, on the last equalized assessment roll of the county or counties in which

the District is located. Rural residential land use shall not constitute Urban Development for the purposes of this Agreement.

d. The Local Agency acknowledges that the information or study shall be the basis for DWR's determination of the maximum allowable reimbursement. The Local Agency agrees to return to DWR any reimbursements paid to the Local Agency that are in excess of the maximum allowable reimbursement, based on an updated study of the agency's ability to pay.

e. Local Agency shall apply for federal disaster assistance whenever eligible.

14. State expenditures under this Agreement shall not exceed **$1,073,625** subject to the availability of funds. The Local Agency estimated reimbursement approved by the Board on June 23, 2017 is **$254,926**. The maximum approved advance amount, limited to 75% of the approved estimated reimbursement is **$191,194.** The Board may increase the estimated reimbursement and advance amounts if information that warrants an increase becomes available.

15. Advanced payments or progress payments may only be made to Local Agency after DWR and CDFW determine the following approval requirements have been met by the Local Agency:

- An AB 360 program *Advance Payment Information Form* is approved in writing by CDFW and DWR.
- A joint CDFW and DWR inspection is completed, as needed, and CDFW has evaluated the extent of the potential impacts associated with the funded project activity.
- Documentation is submitted to DWR confirming that eligible deductible expenditures exceed the $1,000 per levee mile criteria.
- A schedule and appropriate bidding and contract documentation are submitted to DWR for projects requesting advanced funding.

16. To comply with the net long-term habitat improvement program and to have a net benefit to aquatic species as required by California Water Code Sections 12987 and 79050, in the event levee maintenance or improvement activities result in the loss of fish or wildlife habitat, the District agrees to fully mitigate this loss at a time, site and manner subject to CDFW approval.

17. Each Local Agency must comply with the requirements of the Delta Stewardship Council (DSC) regarding Covered Actions. If the Local Agency determines any activities are a Covered Action under Water Code Section 85057.5, the activities are

required to be consistent with the regulatory policies of the Delta Plan. The Local Agency must certify consistency with the Delta Plan by submitting a Certification of Consistency to the DSC prior to performing covered activities. Information regarding Covered Actions and Certification of Consistency may be found on the DSC's website at the following locations:

1. Covered Actions: http://deltacouncil.ca.gov/covered actions
2. Certification of Consistency: http://coveredactions.deltacouncil.ca.gov/certification_process.aspx

18. If DWR finds that work under this Agreement has not been satisfactorily performed, or where advances exceed actual reimbursable costs, the Local Agency shall promptly remit to DWR all amounts advanced in excess of reimbursable costs (California Water Code Section 12987). In the event that Local Agency has an outstanding obligation with DWR pursuant to this paragraph, DWR may seek such reimbursement from the Local Agency by any appropriate means including but not limited to, collecting any amount owing to the Local Agency from DWR or the Board under the Delta Flood Protection Program.

19. The Local Agency shall indemnify and hold and save the State of California, the Board, DWR, and all other agencies or departments of the State and their employees, free from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this Agreement, including but not limited to, those arising from the planning, design, construction, maintenance and operation of levee rehabilitation measures for this Project and any breach of the terms of this Agreement. Local Agency shall require its contractors to name the State, its officers, agents and employees as additional insured's on their liability insurance for activities undertaken pursuant to this Agreement. Local Agency shall also require its contractors to have applicable performance and payment bonding in place before commencing work. The Local Agency's indemnity and related obligations under this Agreement also extend to any similar Department indemnity and related obligations with the U.S. Army Corps of Engineers for emergency assistance, response and rehabilitation of Local Agency's facilities and the Local Agency hereby expressly assumes those obligations.

20. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach, and no excuse of any condition or covenant shall be held to be an excuse of any other condition or covenant, or the same condition or covenant at a subsequent time.

21. This Agreement may be amended in writing by the mutual consent of the parties hereto.

22. The AB 360 Program Funding Claim Information Form with information detailing areas of work on the levees shall be submitted prior to any consideration for reimbursement.

23. All final claims associated with this Agreement shall be submitted by November 1, 2018. DWR requires that all habitat and mitigation requirements under this Agreement shall be completed to the satisfaction of CDFW no later than three years from the date of this Agreement absent a waiver of this requirement by DWR in writing. In the absence of this waiver, failure to complete habitat and mitigation requirements within the three year period will result in forfeiture of reimbursement under this Agreement and future agreements within the Delta Levees Program, until mitigation and habitat requirements are complete. It is the responsibility of the Local Agency to request this waiver of DWR.

THE CENTRAL VALLEY FLOOD PROTECTION BOARD
State of California

By: _____
Executive Officer

Date: _____

THE DEPARTMENT OF WATER RESOURCES
State of California

By: _____

Date: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By: _____
Assistant Chief Counsel

Date: _____

RECLAMATION DISTRICT NO. 830

By: _____

Print Name: DAVID DALPORTO

Print Title: SECRETARY

Date: 2-12-2018

By: Chad Dawson

Print Name: Chad Dawisson

Print Title: President

Date: 2/12/18