RECLAMATION DISTRICT NO. 830
RESOLUTION NO. 19-01
OF THE BOARD OF TRUSTEES
OF RECLAMATION DISTRICT NO. 830
APPROVING WORK AGREEMENT JR-18-1.0-SP
FOR THE PREPARATION OF A FIVE-YEAR PLAN

WHEREAS, California Water Code Section 12311(a) directs the Department to develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and other locations in the delta, for the Towns of Thornton and Walnut Grove, and for approximately 12 miles of levees on islands bordering Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough; and

WHEREAS, Water Code Section 12312 authorizes the Department's expenditures for flood protection and related habitat mitigation and improvement projects, and requires the Department to seek cost sharing with beneficiaries, owners, or operators of facilities benefited by the flood protection projects; and

WHEREAS, Water Code Section 12314 provides that 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, Water Code Section 12315 allows such projects to be undertaken by Reclamation District No. 830 (the "District") pursuant to an agreement with the Department; and

WHEREAS, a catastrophic failure of the District's levee system would result in property damage, impacts to a major water supply facility, and negative environmental impact; and

WHEREAS, the District and its Engineer have determined the need for a plan to better define the District's levee status and repair and rehabilitate levees as necessary (the "Project"); and,

WHEREAS, the District requested by letter to participate in the update of its current Five-Year Plan; and

WHEREAS, the Department concurs with the District's request and has offered Funding Agreement No. JR-18-1.0-SP to fund the Project; and

WHEREAS, State funding for the District's Project is consistent with the objectives of the Special Flood Control Project Program, and is consistent with the Delta ecosystem restoration strategy of the CALFED Bay-Delta Program (Water Code Section 12300(d) and (b)).

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Trustees of Reclamation District No. 830 as follows:

1. The Board finds and determines that the funds made available under this agreement will assist the District in implementing the Project.
2. The Board finds and determines that Project Funding Agreement JR-18-1.0-SP is necessary and in the District's interest.
3. The Board authorizes the execution of JR-18-1.0-SP and directs its Board and staff to undertake all other actions necessary to further its completion.

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, January 8, 2019.

Executed on January 8, 2019, in Oakley, California.

Chad Davisson, President

PROJECT FUNDING AGREEMENT
for Preparation of Five-Year Plan
for Reclamation District No. 830 on Jersey Island
Agreement No. JR-18-1.0-SP

This Agreement is made and entered into by and between the Department of Water Resources of the State of California, hereinafter referred to as "Department," and Reclamation District No. 830 (Jersey Island), a political subdivision of the State of California, hereinafter referred to as "Local Agency" or "District."

WHEREAS, California Water Code Section 12311(a) directs the Department to develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, for the Towns of Thornton and Walnut Grove, and for approximately 12 miles of levees on islands bordering Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough and other locations in the Sacramento-San Joaquin Delta, hereinafter referred to as "Delta"; and

WHEREAS, Water Code Section 12312 authorizes the Department's expenditures for flood protection and related habitat mitigation and improvement projects, and requires the Department to seek cost-sharing with beneficiaries, owners, or operators of public facilities benefited by the flood protection projects; and

WHEREAS, Water Code Section 12314 provides that 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, Water Code Section 12315 allows such projects to be undertaken by the Local Agency pursuant to an agreement with the Department; and

WHEREAS, a catastrophic failure of the District's levee in this area may result in property damage, impacts to a major water supply facility, and negative environmental impacts; and

WHEREAS, the Department published the Delta Levees Special Flood Control Projects: 2014 Guidelines for Providing Funding to Local Public Agencies (hereinafter referred to as "Guidelines") that specify requirements for work under this agreement; and

WHEREAS, the District has either hired or contracted with a State of California Registered Civil Engineer (hereinafter referred to as "Engineer") to meet the requirements specified in the Guidelines; and

WHEREAS, on February 23, 2018, the Department released a "Delta Levees Special Flood Control Projects – Five-Year Plan Solicitation" (Solicitation) in the amount of $3.5 million requesting proposals for preparation of Five-Year Plans; and

WHEREAS, the Solicitation and its criteria were prepared in accordance with the Guidelines; and

WHEREAS, the Local Agency and its Engineer have determined the need for a Five-Year Plan to better define the Local Agency levee status and provide a plan to repair and rehabilitate levees, as necessary (hereinafter referred to as the "Project"); and

WHEREAS, the Local Agency requested by letter dated March 16, 2018, to participate in the development of a Five-Year Plan; and

WHEREAS, the Local Agency will prepare its Five-Year Plan based on Attachment A, *2018 Requirements for the Five-Year Plan*, provided in DWR's solicitation letter dated February 23, 2018, or any revisions; and

WHEREAS, the Department concurs with the District and its Engineer that Department funding for the District's Project is needed to prepare a Five-Year Plan; and

WHEREAS, the Project's benefits will be consistent with the aquatic and wetland habitat goals and objectives set forth in CALFED's Ecosystem Restoration Program Plan, the San Francisco Estuary Project's Comprehensive Conservation and Management Plan, the Central Valley Project Improvement Act, the Anadromous Fish Restoration Plan, and the fisheries recovery strategies described in the November 1996 Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes; and

WHEREAS, this Project will provide opportunities for ecosystem restoration, flood control, water supply and water quality benefits, and conveyance while enhancing levee system integrity consistent with Water Code Section 79553; and

WHEREAS, State funding for the District's Project is consistent with the objectives of the Special Flood Control Projects Program, and is consistent with the Delta ecosystem restoration strategy of the CALFED Bay-Delta Program (Water Code Section 12300(d) and (b)); and

WHEREAS, Water Code Sections 12314 and 79050 provide that expenditures must be consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the Delta; and

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. This Agreement covers Department reimbursement for a portion of the Local Agency's efforts to complete a Five-Year Plan.

2. Subject to the availability of State funding and any sharing of costs or financial assistance pursuant to Water Code Section 12312:

a) the Department shall pay up to 100 percent of the cost of work, performed by the Local Agency under this Agreement, associated with preparation of a Five-Year Plan only to a Local Agency that did not participate in the development of a Five-Year Plan in 2009, not to exceed a total amount of $50,000. Any additional costs, up to $100,000, associated with preparation of a Five-Year Plan may be reimbursed at the rate of 75%, providing that the Local Agency justifies the need for the work.

b) the Department shall pay up to 100 percent of the cost of work, performed by the Local Agency under this Agreement, associated with updating an existing Five-Year Plan, not to exceed a total amount of $35,000. Any additional costs, up to $50,000, associated with updating an existing Five-Year Plan may be reimbursed at the rate of 75%, providing that the Local Agency justifies the need for the work.

3. No payment or reimbursement shall be made for Local Agency administrative services, and no payment or reimbursement beyond the cost associated with construction will be made for on-island borrow.

4. Reimbursement of automobile mileage that is related to project business will follow the prevailing Federal Standard mileage rate for the cost of operating an automobile. No payment will be made for administrative costs related to mileage.

5. The Department reserves the right to later review the Local Agency's ability to pay to determine if conditions have changed for reimbursement of future projects.

6. Subject to the availability of funds pursuant to this Agreement, Local Agency shall be responsible for providing Local Agency personnel and/or professional services as necessary to develop a Five-Year Plan.

7. The Department may pay in advance for the work covered by this Agreement. The amount of such advance payments must be justified by the Local Agency, and shall correspond with the expected costs associated with the Local Agency's Project expenses for six months. The total amount of advance payments shall not exceed 75 percent of the total amount payable under this Agreement. If the Department finds that work under this Agreement has not been satisfactorily performed, or where advances exceed total actual reimbursable expenses, Local Agency shall promptly remit to the Department all amounts advanced in excess of total final reimbursable costs as directed by the Department. Upon request of the Department, and before any advance, Local Agency shall post a bond, provide a letter of credit, or execute a deed of trust or other form of security acceptable to the Department that ensures faithful performance of the work set forth in this Agreement. In the event that Local Agency has an outstanding

obligation with the Department pursuant to this paragraph, the Department may seek such reimbursement from the Local Agency by any appropriate means, including but not limited to collecting any amount owing to Local Agency from the Department or the Central Valley Flood Protection Board under the Delta Flood Protection Program.

8. If the Department provides an advance payment under this Agreement and the Local Agency will not expend the funds within thirty days, the Local Agency shall deposit the funds in an insured account that is acceptable to the Department.

9. Local Agency shall submit quarterly progress reports to the Department to account for Project Expenses covered by any advance payment(s) provided to the Local Agency pursuant to Paragraph 5. Local Agency must also submit to the Department progress reports covering all remaining reimbursable Project expenses in excess of the total allowable advance payment set forth in this Agreement, but not exceeding the total amount payable under this Agreement. The Department will pay Local Agency no more frequently than monthly in arrears for expenses in excess of the total allowable advance payments. Progress reports for District's Project under this Agreement shall include a detailed description of the work performed including a photographic summary as well as a detailed accounting of expenses incurred (additional copies can be transmitted in digital format). Detailed expense reports shall consist of, but not be limited to the following: invoices, rental receipts, employee time sheets, and receipts for supplies and equipment. The Department shall make all reasonable efforts to process payments for costs in excess of the advance payment, but not exceeding the total amount payable under this Agreement, on a timely and high-priority basis following progress report submittal. Progress reports shall reference the title of this Agreement and be mailed to the Department of Water Resources, 3310 El Camino Avenue, Suite 145, P.O. Box 219000, Sacramento, California 95821, Attention: Delta Levees Program.

10. The Department shall pay 90 percent of the costs determined to be eligible for reimbursement as provided in Paragraph 2 of this Agreement and as specified in the Guidelines. The remaining 10 percent, hereinafter referred to as "retention," shall be paid following successful completion of all services to be performed under this Agreement. The District shall resolve all comments and questions provided by the Department and provide one hard copy and one electronic copy of the Final Five-Year Plan before retention is released under this Agreement.

11. The Local Agency shall provide the Department with all relevant engineering/biological data compiled or obtained for the Project. Data collected upon completion of the Project, including, but not limited to as-built surveys, material quantities, quality test data, surveys, and topography shall be provided

prior to final reimbursement to the Local Agency, and will be supplied to the Department in both hard copy and digital format. The Department retains the right to maintain and utilize these data in support of any of its activities.

12. No employee, officer, employer, or agent of Local Agency shall participate in the selection or in the award or administration of a contract supported by State funds 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 the following: Public Contract Code (PCC) Sections 10335.5 *et seq.*, PCC Sections 10365.5 *et seq.*, PCC Sections 10410 *et seq.*, and Government Code Sections 1090 *et seq.*, and 81000 *et seq.*

13. 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, Local Agency shall adopt and enforce a labor compliance program pursuant to Labor Code Section 1771.5. Local Agency must also specifically 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/.

14. In accordance with Water Code Section 9140, if Local Agency is responsible for the operation and maintenance of a project levee, or if Local Agency operates and maintains a non-project levee that also benefits land within the boundaries of the area benefited by a project levee, Local Agency shall prepare and submit to Department, on or before September 30th of each year, a report of information for inclusion in periodic flood management reports prepared by Department 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 levee.

    b) Information identifying known conditions that might impair or compromise the level of flood protection provided by the 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 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 levee, as determined by the Central Valley Flood Protection Board or the Department.

15. In accordance with Water Code Section 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, 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 the Department 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.

16. Local Agency shall provide all lands, easements, and rights-of-way necessary to complete the Project.

17. Local Agency may be eligible for reimbursement for removal and/or relocations necessary to perform the work described in this Agreement. Actual reimbursements shall be at the sole discretion of the Department. Reimbursement for removal and/or relocations of eligible structures shall be made on a case by case basis based on the following criteria:

    a) Any relocation costs associated with structures within an existing levee footprint will be eligible for reimbursement at the same rates as other Project construction costs.

    b) Any structures outside of the existing levee footprint, but within the footprint of the rehabilitated levee or within the construction work area, must be removed, relocated, or otherwise dealt with at the expense of Local Agency or the owner.

    c) Where structures extend both through the existing levee and into the adjacent landside work area, the cost to remove the encroachment shall be appropriately divided between the Project and the Local Agency before work begins.

18. Local Agency, it's Engineer, contractors, subcontractors, and their respective agents and employees required for performing any work for the Project shall act in an independent capacity and not as officers, employees, or agents of the State. Local Agency is solely responsible for planning, design, construction, maintenance, and operation of the Project. Any 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 Local Agency's responsibility for its Project. Local Agency shall cooperate in the conduct of any State review or inspection.

19. Local Agency shall maintain records and books relating to the costs and quantities of labor and materials used, purchased, or constructed for, in the performance of this Agreement. The Department shall have full and free access at all reasonable times to review these books and records with the right at any time during office hours to make copies thereof. The Department or the State Controller shall have the right to conduct audits of Local Agency's expenditures for the work done under this Agreement, the purpose of such audits to assure that Special Projects monies are being properly used, that payments are not being made under different assistance programs for the same work, and that Local Agency is seeking the best terms in its use of State funds. Local Agency shall cooperate fully in any such audit, at its own expense, and shall maintain all

receipts, accounting, books, invoices, and records pertaining to the work covered under this Agreement for a period of ten years after the work has been performed or the expenses incurred.

20. Local Agency shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this Project and this Agreement, including but not limited to, those arising from the planning, design, construction, maintenance and operation of levee rehabilitation measures on Jersey Island 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 insureds 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.

21. No waiver or 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 of the same conditions or covenant at a subsequent time.

22. Statutory provisions of Delta Levees Flood Control Program found at Water Code Sections 12300 through 12318 are incorporated herein by this reference.

23. Local Agency shall be responsible for keeping informed of and complying with all applicable federal, State, and local laws and regulations, and for similarly requiring same of its contractors, including but not limited to those laws and regulations specifically cited, referenced, or incorporated into its Agreement. Without limiting the foregoing sentence, Local Agency and its contractors shall be responsible for all environmental compliance for levee rehabilitation or other work under this Agreement along with any required mitigation for such work pursuant to Water Code Section 12314.

24. Work that is subject to CEQA shall not proceed under this Agreement until documents that satisfy the CEQA process are received by the Department and the Department has completed its CEQA determination as a Responsible Agency. Work that is subject to a CEQA document shall not proceed until and unless concurred with by the Department. 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, the Department will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations, or other mitigation.

25. The Local Agency shall prepare the environmental documents under CEQA and submit to the Department for evaluation. Costs related to the preparation of CEQA documentation completed prior to commencement of work may be eligible for reimbursement.

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

27. Pursuant to Water Code Section 12316(g), Local Agency shall use subsidence control alternatives, where appropriate, to reduce long-term maintenance and improvement costs.

28. In the event any provision in this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. This Agreement may be amended by the mutual consent of the parties hereto.

29. The Department may, in addition to any other remedy available to it, terminate this Agreement and be relieved of any payment obligations should Local Agency fail to perform this Agreement at the time and in the manner herein provided.

30. 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.

31. The following Paragraphs shall survive termination of this Agreement: Paragraphs 2 and 5 through 28.

32. The term of this Agreement shall be effective from the date of the last signature to December 31, 2020.

DEPARTMENT OF
WATER RESOURCES
State of California

By: _____
Jon Ericson, Chief
Division of Flood Management

Date: _____

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

By: _____
Robin E. Brewer, Assistant Chief Counsel

Date: _____

DEPARTMENT OF FISH AND WILDLIFE
State of California

APPROVED AS TO CONSISTENCY
WITH SB34/AB 360 HABITAT
REQUIREMENTS:

By: _____
James Starr, Environmental Program Manager
Delta Levees Habitat Improvement Program

Date: _____

LOCAL AGENCY
Reclamation District No. 830

By: Chad Davison
( ), Title President

Date: 10/18/18

By: _____
(Trustee), Title

Date: 10/18/18

By : _____
( ), Title Trustee

Date : 10/18/18