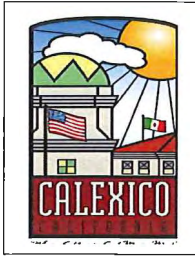


**AGENDA
ITEM**


20




AGENDA STAFF REPORT

DATE: June 15, 2022

TO: Mayor and City Council

APPROVED BY: Diego Favila, Interim City Manager 

PREPARED BY: Lilliana Falomir, Public Works Manager – Administrative 

SUBJECT: Authorize Interim City Manager to Sign Amendment No. 1 between the City of Calexico and the State of California Department of Water Resources for New River Improvement Project – Calexico Reach Agreement No. 4600014089.

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Recommendation:

Authorize Interim City Manager to Sign Amendment No. 1 between the City of Calexico and the State of California Department of Water Resources for New River Improvement Project – Calexico Reach Agreement No. 4600014089.

Background:

The New River is a Water of the United States and a California Water. It originates approximately 18 miles south of the US-Mexico Border, in the Mexicali Valley, Mexico. It enters the United States by the Calexico West Port of Entry, in Calexico, California. The City is proposing to implement New River Improvement Project – Calexico Reach. The Project consists of three primary construction components:

1. Trash screen and diversion structure for the New River downstream from the International Boundary with Mexico.
2. Bypass encasement infrastructure for the New River from a point downstream of the International Boundary to a point downstream of the eastern boundary of the City of Calexico to address the public health threat that new River water quality poses to the southern area of the city.
3. A pump-back system to take treated wastewater from the existing



Calexico Waste Water Treatment Plant (WWTP) and discharge it into the New River channel at a point near the proposed river diversion and encasement structure.

In late 2017, the State Water Resources Control Board (State Water Board) contracted with Michael Baker International (MBI) for \$1,400,000 for the preparation of the plans and specification and draft California Environmental Quality Act (CEQA) for the Project. In 2019, MBI prepared and submitted to the State Water Board and the Colorado River Basin Regional Water Quality Control Board the plans and specification and draft CEQA documentation for the Project. Subsequently, the State Water Board determined that MBI had met the obligations under the contract, including conditions for the deliverables, and closed out its contract with MBI.

In April 2020, the City of Calexico became the California Environmental Quality Act (CEQA) Lead Agency for the Project and adopted an Initial Study and Mitigated Negative Declaration for the Project pursuant to CEQA and CEQA Guidelines. Since then, the City has made significant progress in obtaining securing the funding to build the Project and all the permit required for construction of the Project. In April 2021, the City of Calexico and the California Department of Water Resources (DWR) executed Agreement # 4600014089 for the disbursement of \$28,000,000 allocated to build the Project. However, the plans and specifications prepared by MBI for the Project in 2018 were not finalized for construction purposes, and the DWR-City Agreement as executed in April 2021 does not allocate funds to finalize them. Subsequently, the City requested DWR amend Agreement to cover the costs for finalizing the plans and specifications and shifting \$250,000 funds from one category to another category within the Agreement to fully cover construction management. With support from DWR, the City entered into a contract with MBI in January 2022 to finalize the plans and specifications for construction purposes. MBI is presently finishing the task this month. In April 2022, the City provided DWR additional information in support of its request. Pursuant to the City's request, DWR approved Amendment No. 1 to the Agreement on May 6, 2022.

Discussion & Analysis:

The City needs to finalize the Project plans and specifications for construction purposes and, in substantive part, to:

- Incorporate requested changes by the City Engineer Department to ensure compliance with City construction standards,
- Incorporate recommended changes to minimize environmental impacts on wetlands,
- Address comments from the Imperial Irrigation District, and
- Address comments from the US Department of Homeland Security's Border Patrol.

Because the Agreement as executed in April 2021 does not allocate funds to finalize the plans and specification and the plans and specifications must be finalized, the Agreement needed to be amended so that the City can get reimbursed for the costs to finalize them

from the \$28,000,000 allocated to the Project. The Agreement also needed to be revised to shift some funds from one category to another category of the Agreement to fully cover Construction Management costs. The City Manager requested DWR amend the Agreement as described above and provided DWR with additional requested information in April 2022. DWR approved the requested revisions on May 6, 2022 in the form of Amendment 1 to the Agreement. Attached is a copy of the DWR amended Agreement for the City of Calexico Council consideration. The City's administrative costs to modify the Agreement are covered by the Agreement.

Fiscal Impact:

No fiscal impact at this time.

Coordinated With:

City Manager's Office.
Public Works Department.

Attachment(s):

1. Amendment No. 1 between the City of Calexico and the State of California Department of Water Resources for New River Improvement Project – Calexico Reach Agreement No. 4600014089.

**STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

Agreement Number: 4600014089

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND
CITY OF CALEXICO**

FOR THE NEW RIVER IMPROVEMENT PROJECT – CALEXICO REACH

**AUTHORIZED BY
THE CALIFORNIA DROUGHT, WATER, PARKS, CLIMATE, COASTAL PROTECTION,
AND OUTDOOR ACCESS FOR ALL ACT OF 2018
AND
THE BUDGET ACT OF 2020, ITEMS 3860-101-0001 AND 3860-101-6088**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA
(DEPARTMENT OF WATER RESOURCES) AND
THE CITY OF CALEXICO
4600014089
AMENDMENT 1**

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 City of Calexico, a public 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 California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68), and Budget Act of 2020, Items 3860-101-0001 and 3860-101-6088 (Senate Bill [SB] 74, Stats. 2020, ch. 6) to Funding Recipient to assist in financing the New River Improvement Project – Calexico Reach (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 payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by May 31, 2023, and no funds may be requested after June 30, 2023.
3. FUNDING AMOUNT. The maximum amount payable by the State under this Agreement shall not exceed \$28,000,000.
4. BASIC CONDITIONS. State shall have no obligation to disburse money for the Project under this Funding Agreement until Funding Recipient has satisfied the following conditions:
 - A. Funding Recipient must demonstrate compliance with the groundwater compliance options set forth on pages 10 and 11 in the IRWM Program Guidelines, dated April 2019.
 - B. For the term of this Funding Agreement, Funding Recipient submits timely Quarterly Progress Reports as required by Paragraph 11, "Submission of Reports."
 - C. Funding Recipient submits all deliverables as specified in Paragraph 11 of this Funding Agreement and in Exhibit A.
 - D. Prior to the commencement of construction or implementation activities, Funding Recipient shall submit the following to the State:
 - i. Final plans and specifications certified by a California Registered Civil Engineer as to compliance for the Project as listed in Exhibit A of this Funding Agreement.
 - ii. 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:
 - a. Funding Recipient submits to the State all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - b. Documents that satisfy the CEQA process are received by the State,
 - c. State has completed its CEQA compliance review as a Responsible Agency, and
 - d. 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., construction or 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 beginning construction/implementation.

iii. A monitoring plan as required by Paragraph 13, "Project Monitoring Plan Requirements."

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 used solely to pay Eligible Project Costs.
6. 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. Reimbursable administrative expenses are the necessary costs incidental but directly related to the Project included in this Agreement. Work performed on the Project on/after July 1, 2020, shall be eligible for reimbursement.

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 July 1, 2020.
 - B. Operation and maintenance costs, including post construction performance and monitoring costs.
 - C. Purchase of equipment not an integral part of the Project
 - D. Establishing a reserve fund.
 - E. Purchase of water supply
 - F. Monitoring and assessment costs for efforts required after project construction is complete.
 - G. Replacement of existing funding sources for ongoing programs.
 - H. Travel and per diem costs.
 - I. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
 - J. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of the Project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to July 1, 2020.
 - K. 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. After the disbursement requirements in Paragraph 4 "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 or an electronic invoice certified and transmitted via DocuSign for costs incurred, including Cost Share, and timely Quarterly Progress Reports as required by Paragraph 11, "Submission of Reports." Payment will be made no more frequently than quarterly, 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:

- A. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
- B. 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.
- C. 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 depicted in Paragraph 3, "Funding Amount."
 - v. Original signature and date of the Funding Recipient's Project Representative. Submit an electronic invoice, certified and transmitted via electronic/digital signature system (e.g., DocuSign), from authorized representative to the Project Manager or the original "wet signature" copy of the invoice form to the Project Manager at the following address: Eddie Pech, Water Resources Engineer, Department of Water Resources, Division of Regional Assistance, 770 Fairmont Avenue, Suite 200, CA 91203.

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. 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 material breach of this Agreement 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 filed to obtain this Funding Agreement;
 - C. Failure to operate or maintain Project in accordance with this Funding Agreement.
 - 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.
 - G. Failure to meet any of the requirements set forth in Paragraph 10, "Continuing Eligibility."

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, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
- 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. CONTINUING ELIGIBILITY. Funding Recipient must meet the following ongoing requirement(s) to remain eligible to receive State funds:
- A. An urban water supplier that receives appropriated funds pursuant to this Agreement shall maintain compliance with the Urban Water Management Planning Act (UWMP; Wat. Code, § 10610 et seq.) and Sustainable Water Use and Demand Reduction (Wat. Code, § 10608 et seq.) as set forth on page 11 of the 2019 Guidelines and as stated on page 22 of the Proposal Solicitation Package.
 - B. An agricultural water supplier receiving appropriated funds shall comply with Sustainable Water Use and Demand Reduction requirements outlined in Water Code section 10608, et seq. and have their Agricultural Water Management Plan (AWMP) deemed consistent by DWR. To maintain eligibility and continue funding disbursements, an agricultural water supply shall have their 2015 AWMP identified on the State's website. For more information, visit the website listed in Appendix A in the 2019 Guidelines.

- C. A surface water diverter appropriated grant funds shall maintain compliance with diversion reporting requirements as outlined in Water Code section 5100 et. seq.
 - D. If applicable, the Funding Recipient shall demonstrate compliance with the Sustainable Groundwater Management Act (SGMA) set forth on pages 8-10 of the 2019 Guidelines.
 - E. If the Funding Recipient has been designated as a monitoring entity under the California Statewide Groundwater Elevation Monitoring (CASGEM) Program, the Funding Recipient shall maintain reporting compliance, as required by Water Code section 10932 and the CASGEM Program.
 - F. The Funding Recipient shall adhere to the protocols developed pursuant to The Open and Transparent Water Data Act (Wat. Code, § 12406, et seq.) for data sharing, transparency, documentation, and quality control.
11. 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, and shall be submitted via DWR's "Grant Review and Tracking System" (GRanTS). 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.
- A. Quarterly Progress Reports: Funding Recipient shall submit quarterly Progress Reports to meet the State's requirement for disbursement of funds. Progress Reports shall be shall be uploaded via GRanTS, and the State's Project Manager notified of upload. 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. The first Progress Report must accompany an invoice (\$0 Invoices are acceptable) and shall be submitted to the State no later than the 30th day of the first calendar quarter after the execution of the agreement (e.g. April 30th) with future reports then due on successive three-month increments.
 - B. Project Completion Report: Funding Recipient shall prepare and submit to State a Project Completion Report. Funding Recipient shall submit the Project Completion Report within sixty (60) calendar days of Project completion as outlined in Exhibit F. The Project Completion Report shall also include, if applicable, certification of final project by a registered civil engineer, consistent with Standard Condition D.17, "Final Inspections and Certification of Registered Civil Engineer". A DWR "Certification of Project Completion" form will be provided by the State.
 - C. Post-Performance Reports: Funding Recipient shall submit Post-Performance Reports. Post-Performance Reports shall be submitted to State within ninety (90) calendar days after the first operational year of the Project has elapsed. This record keeping and reporting process shall be repeated annually for a total of 3 years after the completed Project begins operation.
12. OPERATION AND MAINTENANCE OF PROJECT. For the useful life of the Project 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 9, "Default Provisions."

13. PROJECT MONITORING PLAN REQUIREMENTS. A Monitoring Plan shall be submitted to the State prior to disbursement of State funds for construction or monitoring activities. The Monitoring Plan should incorporate Post-Performance Monitoring Report requirements as defined and listed in Exhibit F, and follow the guidance provided in Exhibit I, "Monitoring and Maintenance Plan Components."
14. STATEWIDE MONITORING REQUIREMENTS. Funding Recipient shall ensure that all groundwater projects and projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Wat. Code, § 10780 et seq.) and, where applicable, that projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board.
15. 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, 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.
 - 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 construction, 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.
 - E. Final inspection of the completed work on the Project by a Registered Civil Engineer, in accordance with Standard Condition D.17, "Final Inspections and Certification of Registered Civil Engineer." 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:
 - 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.

17. 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.

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

Department of Water Resources
Arthur Hinojosa
Manager, Division of Regional Assistance
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 653-4736
Email: Arthur.Hinojosa@water.ca.gov

City of Calexico
~~Miguel Figueroa~~ Diego Favila
~~City Manager~~ Interim City Manager
~~608 Heber Avenue~~ 608 Heber Avenue
Calexico, CA 92231
Phone: (760) 768-2110
Email: ~~mfigueroa@calexico.ca.gov~~ dfavila@calexico.ca.gov

Direct all inquiries to the Project Manager:

Department of Water Resources
Eddie Pech, P.E.
Division of Regional Assistance
770 Fairmont Avenue, Suite 200
Glendale, CA 91203
Phone: (818) 549-2324
Email: Eduardo.Pech@water.ca.gov

City of Calexico
~~Miguel Figueroa~~ Diego Favila
~~City Manager~~ Interim City Manager
~~608 Heber Avenue~~ 608 Heber Avenue
Calexico, CA 92231
Phone: (760) 768-2110
Email: ~~mfigueroa@calexico.ca.gov~~ dfavila@calexico.ca.gov

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

19. 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 – Requirements for Data Submittal
- Exhibit H – State Audit Document Requirements for Funding Recipients
- Exhibit I – Monitoring and Maintenance Plan Components

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

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CITY OF CALEXICO

Arthur Hinojosa
Manager, Division of Regional Assistance

~~Miguel Figueroa~~ Diego Favila
~~City Manager~~ Interim City Manager

Date _____

Date _____

Approved as to Legal Form and Sufficiency

Robin Brewer, Assistant General Counsel
Office of General Counsel

Date _____

Exhibit A WORK PLAN

Project Title: New River Improvement Project - Calexico Reach

Project Description: The Project consists of three primary construction components: (1) a trash screen and diversion structure for the New River downstream from the International Boundary with Mexico; (2) bypass encasement infrastructure for the New River from a point downstream of the International Boundary to a point downstream of the eastern boundary of the City of Calexico in order to address the public health threat that New River water quality poses to the southern area of the City; and (3) a pump-back system to take treated wastewater from the existing Calexico Waste Water Treatment Plant (WWTP) and discharge it into the New River channel at a point near the proposed river diversion and encasement structure. The Project also includes project management, environmental and construction permitting, engineering services, and construction management.

Category A: Administration

Task 1: Funding Administration

Funding Recipient staff support for the administration of the Funding Agreement and Project, including coordination of project development activities, review and approval of project deliverables, development of invoices and tracking expenditures, grant-related reporting, and coordination of consultants, sub-consultants, and third parties, and compliance with applicable California Labor Code requirements as per Exhibit D.

Task 2: Project Management

Provide project management to guide completion of the project from beginning to end, this may include but is not limited to:

- Project budget management and tracking,
- Coordination of Project Team, and project permitting and construction, project communication, project completion deadlines, and project schedule tracking,
- Project problem troubleshooting and solving,
- Project compliance with the California Department of Industrial Relations (CDIR) requirements,
- Project invoicing,
- Development of Progress Reports,
- Attending kickoff, coordination, policy, and other key project meetings,
- Conducting progress meetings,
- Recommending to City expansion and/or contraction of Project Team based on project progress and needs,
- Tracking Project Warranties, and
- Providing quality assurance/quality control (QA/QC) review and analysis, if necessary.

Deliverables

- Invoices and associated backup documentation
- Quarterly Progress Reports
- Program schedule and budget updates
- Final Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit" per Standard Condition D.2

Category B: Permitting and Environmental Documentation

Task 3: Permitting and Environmental Documentation

Prepare and acquire all identified federal, state, and local permits from applicable regulatory agencies may include, but are not limited to:

- Finalize Project plans and specification for permitting and construction purposes
- Project Grading Permit
- Calexico International Airport Permit for construction of Pump-back lift station and forcemain
- Imperial Irrigation District (encroaching permit(s), power service Agreement(s), review and approval of electrical power panels, review and approval of encasement outfall and energy dissipater)
- Imperial County (service agreement for trash disposal at County Landfill)
- Imperial County Air Pollution Control District (emergency generators permit(s))
- California Department of Fish and Wildlife (Sec. 1603 Permit/Agreement)
- California State Water Resources Control Board, Division of Water Quality (General NPDES Permit for Discharges of Stormwater from Construction Activities)
- State Water Resources Control Board, Division of Water Rights (Approval as needed for change of location of discharge from City WWTP and for diversion of New River)
- California Regional Water Quality Control Board, Colorado River Basin Region (Permit for discharges from Dewatering Activities, Revised NPDES Permit for City WWTP, and federal Clean Water Act [CWA] Section 401 Water Quality Certification)
- CalOSHA Excavation and Tunneling Permits
- U.S. Army Corps of Engineers (CWA Sec. 404 Permit, if needed)
- Consultation with and consent from US Department of Homeland Security for Trash Screen, Diversion Structure, and Encasement
- California Department of Toxic Substances Control (for handling and disposing of hazardous wastes as needed)

Deliverables

- Final plans and specifications, EIF, all CEQA and NEPA documents, permits, approvals, consent(s), and access agreements.

Task 4: Project Monitoring Plan

This task includes development and submittal of a Project Monitoring Plan. The Project Monitoring Plan will include baseline conditions, a brief discussion of monitoring systems to be used, the metrics/performance measures, methodology of monitoring, frequency of monitoring, and other relevant performance monitoring details in accordance with the provisions of Paragraph 13 of this Agreement.

Deliverables:

- Monitoring Plan

Category C: Construction Contracting and Administration

Task 5: Construction Contracting

This task must comply with the Paragraph D.10 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a contractor and award the contract, including: develop bid documents, prepare advertisement and contract documents for construction contract bidding, conduct pre-bid meeting, bid opening and evaluation, selection of the contractor, award of contract, issuance of notice to proceed, approval of change-of-orders as needed.

Deliverables:

- Bid Documents
- Proof of Advertisement
- Award of Contract
- Notice to Proceed

Task 6: Construction Administration

This task includes managing contractor submittal review, answering requests for information, and issuing work directives. A full-time engineering construction observer will be on site for the duration of the Project. Construction observer duties include, but are not limited to, documenting of pre-construction conditions, daily construction diary, preparing change orders, addressing questions of contractors on site, reviewing and recommending updating project schedule, reviewing contractor log submittals and pay requests, forecasting cash flow, notifying contractor if work is not acceptable. Upon completing the Project, the DWR Certificate of Project Completion and record drawings will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion
- As-Builts/Record Drawings

Category D: Project Construction

Task 7: Construction/Implementation Activities

The major construction components of the New River Project include the trash screen, pump-back system, and bypass encasement infrastructure, which includes the diversion structure, energy dissipater, riprap, alignment and pipe trench. Construction activities are outlined below.

- a) Mobilization and Demobilization for construction of Trash Screen and Diversion Structure, Bypass Encasement, and Pump-back System
- b) Site preparation will include identification of utilities and other existing critical infrastructure in the Project's area (e.g., under- and above-ground electrical, water, sewer, communication, gas lines, etc.), construction survey staking, site fencing, designation of staging areas for construction equipment and materials, designation of parking area for contractors and their employees, establishment of temporary construction office(es), designation of site access road(s), selective demolition, establishment of traffic controls, and site grading.
- c) Construction of Trash Screen and Diversion Structure:
 1. Construct new concrete channel diversion in the existing New River, including concrete diversion structure, aluminum slide gate with seismic actuator and handwheel operation, concrete push-up weir and trash rack system;

2. Construct new trash rack system, including stainless-steel bar screens, overhead trolley monorail, overhead gripper unit, and two maintenance platforms with ladders;
 3. Install security fence and swing entry gate for maintenance and trash refuse access,
 4. Regrade and pave site to provide access to equipment;
 5. Isolate and construct temporary gravity diversion and dewatering for temporary bypass, including cast-in-place trash screen and diversion structure, site civil improvements, grading, electrical improvements and mechanical improvements;
 6. Relocation or removal of existing on-site items, including security gate, water sampling bridge and gaging station; and
 7. Construct trenching, grading and fencing, installation of electrical power for trash screen, and Diversion structure.
 8. Prepare, present, and deliver the Operation and Maintenance (O&M) Manual for Trash Screen and Diversion Structure.
- d) Construct Bypass Encasement and its Energy Dissipater
1. Construct, develop, and test approximately 8,100 linear feet (LF) fiberglass-reinforced polymer mortar encasement pipe, including storm drain cleanouts, watertight joints and cutoff walls;
 2. Construct rip-rap and concrete energy dissipater for bypass encasement discharge;
 3. Construct trenching, grading and fencing;
 4. Perform erosion control; and
 5. Perform micro-tunneling for portion of encasement pipe.
 6. Prepare, present, and deliver O&M Manual for Bypass Encasement and Energy Dissipater.
- e) Construct Pump-back System (PBS) and its Force Main
1. Construct 5.0-million-gallon PBS, including three centrifugal pumping units, appurtenant isolation valves, fittings and pressure instrumentation, wet well and flow meter vault;
 2. Construct diameter precast concrete wet well, including PVC pipelines, sewer manholes and concrete diversion structure;
 3. Install prefabricated building for the PBS' pump station, install generator and transfer switch;
 4. Construct concrete padding, trenching, fencing and pavement for PBS;
 5. Paint and coat pump back building interior and exterior of appurtenant piping and metal appurtenances;
 6. Construct new PVC storm drain to replace and connect to existing storm drain junction box and storm drain;
 7. Construct, develop, and test approximately 4,100 LF zinc coated ductile iron pipe force main including combination air release valves and blowoffs;
 8. Construct fiber optic pullbox and conduit;
 9. Rerouting of Calexico WWTP effluent to new discharge location;
 10. Prepare, present, and deliver O&M Manual for Pump-back system and Force Main.

Deliverables

- Pre-construction site reconnaissance report
- Construction Progress Reports, with photographic documentation of progress
- Post-construction project report
- Copies of O&M Manuals for Trash Screen and Diversion Structure, Bypass Encasement and Energy Dissipater, and PBS.

Exhibit B
BUDGET

Project Budget					
Project Title: New River Improvement Project Calexico Reach					
Budget Category		General Funds	Prop 68 Funds	City's Cost Share	Total Cost
(A)	Administration	\$400,000	\$50,000	\$0	\$450,000
(B)	Permitting and Environmental Documentation	\$0	\$1,680,000	\$0	\$1,680,000
(C)	Construction Contracting and Administration	\$0	\$2,075,000	\$0	\$2,075,000
(D)	Construction/Implementation Activities	\$17,600,000	\$6,195,000	\$0	\$23,795,000
TOTAL COSTS		\$18,000,000	\$10,000,000	\$0	\$28,000,000

Exhibit C
SCHEDULE

Project Schedule			
Project Title: New River Improvement Project - Calexico			
Budget Category		Start Date	End Date
(A)	Administration	12/01/2020	04/30/2023
(B)	Permitting and Environmental Documentation	01/04/2021	11/30/2021
(C)	Construction Contracting and Administration	04/30/2021	05/31/2023
(D)	Construction/Implementation Activities	12/30/2021	05/31/2023

Exhibit D**STANDARD CONDITIONS**

- D.1. **ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**
- A. **Separate Accounting of Funding Disbursements:** 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 and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
 - B. **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited in a non-interest bearing account, administered, and accounted for pursuant to the provisions of applicable law.
 - C. **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this 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 AND SIGNAGE:** Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 and through an agreement with the State Department of Water Resources." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.
- 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. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.
- 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. **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 9 or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this 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 receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Funding Recipient's activities. (Pub. Resources Code, § 80012, subd. (b).)

- D.6. BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.
- D.7. CEQA: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 9.
- D.8. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
 - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 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's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and

regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.

- 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.
- A. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- B. Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
- D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- 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.
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. Funding Recipient's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this 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. EASEMENTS: Where the Funding Recipient acquires property in fee title or funds improvements to real property already owned in fee by the Funding Recipient using State funds provided through this Funding Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

Where the Funding Recipient acquires an easement under this Agreement, the Funding Recipient agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner.

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

- D.17. FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement.
- D.18. FUNDING RECIPIENT'S RESPONSIBILITIES: Funding Recipient and its representatives shall:
- A. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).
 - B. 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 funding.
 - C. Comply with all applicable California, federal, and local laws and regulations.
 - D. Implement the Project in accordance with applicable provisions of the law.

- E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
 - F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
 - G. Be solely responsible for design, construction, and operation and maintenance of projects within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
 - H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.
- D.19. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.20. INCOME RESTRICTIONS: The Funding Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Funding Recipient under this Agreement shall be paid by the Funding Recipient to the State, to the extent that they are properly allocable to costs for which the Funding Recipient has been reimbursed by the State under this Agreement. The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.
- D.21. 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.22. 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.23. 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.24. 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.25. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- D.26. 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 Exhibits A, B, and C 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.27. 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/domestic partner status, gender identity, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.
- D.28. 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.29. PERFORMANCE BOND: Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D.30. PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

- D.31. 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.32. PROJECT ACCESS: The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D.33. REMAINING BALANCE: In the event the Funding Recipient does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify the Funding Recipient stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Funding Agreement.
- D.34. 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.35. RETENTION: The State shall 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. Any retained amounts due to the Funding Recipient will be promptly disbursed to the Funding Recipient, without interest, upon completion of the Project.
- D.36. 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.37. 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.38. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both if the State determines that:
- A. Funding Recipient, its contractors, or subcontractors have made a false certification, or
 - B. Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.
- D.39. 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.40. 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.41. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 9, 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 9.
- D.42. 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.43. 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.44. TIMELINESS: Time is of the essence in this Funding Agreement.
- D.45. TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. 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. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- D.46. UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:
- A. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
 - B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
 - C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- D.47. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D.48. 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
AUTHORIZING RESOLUTION ACCEPTING FUNDS TEMPLATE

RESOLUTION NO. 2020-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AUTHORIZING THE CITY TO ENTER INTO A FUNDING AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES TO RECEIVE FUNDS FOR FUNDS FOR THE NEW RIVER IMPROVEMENT PROJECT - CALEXICO REACH INFRASTRUCTURE IMPROVEMENTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the legislature of the State of California enacted and the Governor signed into law the 2020-2021 Budget to provide \$18 million of one-time general fund dollars and \$10 million from Proposition 68 for the New River Improvement Project – Calexico Reach Infrastructure Improvement Projects ("Project"); and

WHEREAS, the 2020-2021 State of California Budget delegated the responsibility for the administration of the fund, including establishing the necessary procedures for disbursement of the fund, to the California Department of Water Resources ("CDWR"); and

WHEREAS, the City of Calexico ("City") is the Lead Agency for the Project; and

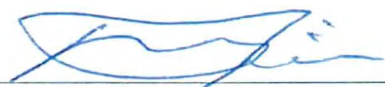
WHEREAS, the City agrees that the funds should be accepted and administered by the CDWR; and

WHEREAS, CDWR requires a resolution from the City authorizing the City to enter into an agreement with the CDWR to receive funds and specify an authorized signatory for the agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Calexico hereby:

1. Authorizes the City to enter into a funding agreement with the State of California Department of Water Resources to receive funds for funds for the New River Improvement Project - Calexico Reach infrastructure improvements and authorizing the City Manager to execute the agreement on behalf of the city, and amendments thereto, with the State of California Department of Water Resources.


PASSED, APPROVED, AND ADOPTED this 18th day of November, 2020, by the City Council of the City of Calexico.



Morris Reisin, Mayor Pro Tempore

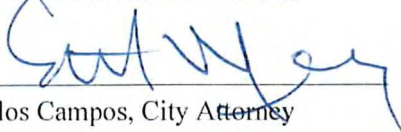
Resolution No. 2020-52
Page 2

ATTEST:



Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:



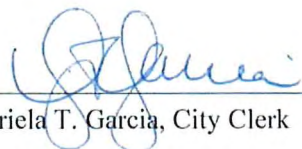
to Carlos Campos, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela T. Garcia, City Clerk of the City of Calexico do hereby certify the above Resolution No. 2020-52 was approved at a regular City Council meeting held on the 18th day of November, by the following roll-call vote:

- AYES: Reisin, Pacheco, Garcia, Hodge
- NOES: None
- ABSTAIN: None
- ABSENT: Arreola-Fernandez





Gabriela T. Garcia, City Clerk

Exhibit F

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. Discuss the following at the task level, as organized in Exhibit A:

- Percent complete (by work)
- Discussion of work accomplished during the reporting period.
- Milestones or deliverables completed/submitted during the reporting period.
- Meetings held or attended.
- Scheduling concerns and issues encountered that may delay completion of the task.
- Budget projections for grant share for the next two quarters

Discuss the following as organized in Exhibit A:

- Work anticipated for the next reporting period.
- Photo documentation, as appropriate.
- Any schedule or budget modifications approved by DWR during the reporting period.

PROJECT COMPLETION REPORT

Project Completion Reports shall generally use the following format.

Executive Summary

The Executive Summary should include a brief summary of project information and include the following items:

- Brief description of work originally proposed.
- List any official amendments to this Funding Agreement, with a short description of the amendment.

Reports and/or Products

The following items should be provided, unless already submitted as a deliverable:

- A copy of any final technical report or study, produced for or utilized in this Project as described in the Exhibit A
- Electronic copies of any data collected, not previously submitted
- Discussion of problems that occurred during the work and how those problems were resolved
- Final project schedule showing actual progress versus planned progress as shown in Exhibit C
- Additional information that may be applicable for implementation projects includes the following:
 - Record drawings
 - Final geodetic survey information
 - Project photos

Cost & Disposition of Funds

A list showing:

- Summary of Project costs including the following items:
 - Accounting of the cost of project expenditure;

- Include all internal and external costs not previously disclosed (i.e., additional cost share); and
- A discussion of factors that positively or negatively affected the project cost and any deviation from the original Project cost estimate.

Additional Information

- Benefits derived from the Project, with quantification of such benefits provided.
- If applicable, Certification from a California Registered Professional (Civil Engineer or Geologist, as appropriate), consistent with Exhibit D, that the project was conducted in accordance with the approved Work Plan in Exhibit A and any approved amendments thereto.
- Submittal schedule for the Post-Performance Report.

Exhibit G

REQUIREMENTS FOR DATA SUBMITTAL

Surface and Groundwater Quality Data:

Groundwater quality and ambient surface water quality monitoring data that include chemical, physical, or biological data shall be submitted to the State as described below, with a narrative description of data submittal activities included in project reports, as described in Exhibit X.

Surface water quality monitoring data shall be prepared for submission to the California Environmental Data Exchange Network (CEDEN). The CEDEN data templates are available on the CEDEN website. Inclusion of additional data elements described on the data templates is desirable. Data ready for submission should be uploaded to your CEDEN Regional Data Center via the CEDEN website. CEDEN website: <http://www.ceden.org>.

If a project's Work Plan contains a groundwater ambient monitoring element, groundwater quality monitoring data shall be submitted to the State for inclusion in the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program. Information on the GAMA Program can be obtained at: https://www.waterboards.ca.gov/water_issues/programs/gama/. If further information is required, the Funding Recipient can contact the State Water Resources Control Board (SWRCB) GAMA Program. A listing of SWRCB staff involved in the GAMA program can be found at: https://www.waterboards.ca.gov/water_issues/programs/gama/contact.shtml.

Groundwater Level Data

For each project that collects groundwater level data, Funding Recipient will need to submit this data to DWR's Water Data Library (WDL), with a narrative description of data submittal activities included in project reports, as described in Exhibit F. Information regarding the WDL and in what format to submit data in can be found at: <http://www.water.ca.gov/waterdatalibrary/>.

Exhibit H

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.

Exhibit I

MONITORING AND MAINTENANCE PLAN COMPONENTS

Introduction

- Goals and objectives of project
- Site location and history
- Improvements implemented

Monitoring and Maintenance Plan

- Monitoring Metrics (ex: Plant establishment, bank erosion, hydraulic characteristics, habitat expansion)
- Maintenance Metrics (ex: irrigation, pest management, weed abatement, continuous invasive species removal until natives established)
- Special Environmental Considerations (ex: resource agency requirements, permit requirements, CEQA/NEPA mitigation measures)
- Performance Measures, or success/failure criteria monitoring results measured against (ex: percent canopy cover after 1, 5, 10 years, water temperature decrease, site specific sediment scour or retention)
- Method of Reporting (ex: paper reports, online databases, public meetings)
- Frequency of Duration Monitoring and Reporting (daily, weekly, monthly, yearly)
- Frequency and Duration of Maintenance Activities
- Responsible Party (who is conducting monitoring and/or maintenance) Implementing responsibility (i.e., who is responsible for monitoring and maintenance)
- Adaptive Management Strategies (i.e., what happens when routine monitoring or maintenance encounters a problem)