

A-18-248

**INTERIM SEED MONEY FUNDING AGREEMENT
AMONG THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY,
THE CITIES OF LATHROP, MANTECA, AND STOCKTON
AND THE COUNTY OF SAN JOAQUIN,
TO ADVANCE THE MOSSDALE PROJECT**

This interim Seed Money Funding Agreement (Agreement) is among the San Joaquin Area Flood Control Agency (SJAFCFA), the Cities of Lathrop, Manteca, and Stockton, and the County of San Joaquin (the County) to provide initial funding for the advancement of the Mossdale Tract Area Project (the Project) and is made for convenience on this 12 day of June, 2018.

1. Recitals.

A. Whereas, the Mossdale Tract area currently has Federal Emergency Management Agency accreditation for a 100-year level of protection due in part to the continuing efforts of Reclamation District No. 17; and,

B. Whereas, the State of California has enacted Senate Bill 5, which requires an Urban Level of Protection (ULOP) for urban and urbanizing areas of the Central Valley, consisting of findings in conjunction with specified land development to ultimately achieve 200-year level of flood protection; and,

C. Whereas, the three Cities and the County (collectively, the Lending Agencies) each have land use authority over portions of the Mossdale Tract area and have vested interests in the protection and benefit of their residents to ensure that the Mossdale Tract area achieves ULOP; and,

D. Whereas, the Cities of Lathrop and Manteca have, prior to the Effective Date of this Agreement, used funds from various sources to initiate development of the Project to achieve ULOP; and,

E. Whereas, the Cities of Lathrop and Manteca have previously adopted Interim Levee Impact Fee Programs to collect funds to finance the Project; and,

F. Whereas, the Cities of Lathrop, Manteca, and Stockton, the County, and the San Joaquin County Flood Control and Water Conservation District, have amended and restated the Joint Exercise of Powers Agreement to add the Cities of Lathrop and Manteca, all for the coordinated planning for the control of waters within or flowing into the boundaries of the Joint Powers Agency (JPA), the protection of private and public property, and the creation of a regional voice regarding flood management issues; and,

G. Whereas, the Lending Agencies desire for SJAFCA to take over the planning and implementation of the Project, and will loan seed money to SJAFCA based on Section 24 of the JPA for initial Project efforts; and,

H. Whereas, SJAFCA can receive funding through loans offered by the Lending Agencies under JPA Section 24 to assume responsibility for the planning and implementation of the Project; and,

I. Whereas, the Lending Agencies desire to be repaid for the amounts loaned under this Agreement, and the Cities of Lathrop and Manteca also desire to be reimbursed for certain funds already expended to further the Project, to the extent funds are available in the SJAFCA budget for timely repayment without inhibiting the implementation of the Project.

Now, therefore, in consideration of the promises made herein, the Parties do hereby agree as follows:

2. Advancement of Mossdale Project. In consideration of Lending Agency loans provided under Section 3 below, SJAFCA will advance the Project for the remainder of Fiscal Years 2017-18 and 2018-19. While the Project Scope of Work may be updated during that time period and is ultimately subject to the adopted SJAFCA budget and any contracts approved by the SJAFCA Board to further the Project, the expected Project tasks for which the loaned money will be spent will at least consist of the following activities through the end of Fiscal Year 2018-19:

(A) Project activity budget costs associated with efforts that directly relate to maintaining and supporting Lending Agency ULOP adequate progress findings, including preparation of an annual update to the ULOP Adequate Progress Report to be made publicly available and submitted to the Central Valley Flood Protection Board by SJAFCA for the use of any Lending Agency; and,

(B) Development, establishment and administration of funding, crediting, and reimbursement programs for funding ULOP improvements, including:

- (1) Regional Levee Impact Fee Program;
- (2) Assessment District Overlay;
- (3) Enhanced Infrastructure Financing District efforts; and,
- (4) Support and coordination activities credited as local cost-share that advance State and Federal funding for the Project.

(C) SJAFCA operating budget consisting of staff and legal support directly expended to advance the Project and a proportional share of allocable overhead costs.

3. Seed Money Loans by Lending Agencies.

A. The Lending Agencies agree to loan to SJAFCA funding in the amounts specified in Sections 3.B. and 3.C. of this Agreement, according to the schedule provided in this Agreement, for SJAFCA to continue developing the Project as provided in Section 2.A.(1-3).

B. Within 30 days of a Lending Agency signing this Agreement, the Lending Agency agrees to make available to SJAFCA an initial loan in the amount of \$65,000 for the remainder of the Fiscal Year 2017-18 budget. Any funding provided to SJAFCA by a Lending Agency to advance the Project prior to the effective date of this Agreement shall count toward the initial obligation under this subsection.

C. On a quarterly basis, beginning in Fiscal Year 2018-19, SJAFCA will provide written notification to the Lending Agencies on SJAFCA's budgetary status regarding the need for additional funds for the Project to be provided via loans from the Lending Agencies in equal amounts. The Lending Agencies agree to provide such additional loans not to exceed a total of \$300,000 per Lending Agency (not including the original loan of \$65,000 per Lending Agency) through the end of Fiscal Year 2018-19. This not to exceed amount of \$300,000 per Lending Agency shall be further reduced by an amount equal to one-fourth of any Interim Levee Impact Fees collected by any of the Lending Agencies and provided to SJAFCA under Section 4 or Regional Levee Impact Fees collected by SJAFCA. For the sake of clarity, the Lending Agencies expressly agree that any such Interim Levee Impact Fees or Regional Levee Impact Fees shall equally offset the obligations of all the Lending Agencies under this subsection.

4. Interim Levee Impact Fees.

A. Within 15 days of a Lending Agency signing this Agreement, the Lending Agency agrees to transfer to SJAFCA any Interim Levee Impact Fees held by that Lending Agency at the time of the signing of the Agreement.

B. All Lending Agencies agree to promptly transfer to SJAFCA any Interim Levee Impact Fees collected by them at any time after the Effective Date of this Agreement. This provision shall not require the transfer funds more often than once in a 30 day period.

5. Effectiveness of Agreement. This Agreement shall be effective as to each Lending Agency upon the signing of the Agreement by SJAFCA and the counter-signing by that Lending Agency. It is anticipated that all four Lending Agencies will sign the Agreement, but the Parties

agree that the Agreement shall be effective as to any Lending Agency that signs the Agreement whether or not all Lending Agencies sign it.

6. Security for and Repayment of the Seed Money Loans.

A. Each loan made by a Lending Agency to SJAFCA under this Agreement shall be unsecured.

B. It is the intention of the Parties that the funds to be raised by SJAFCA under Section 2A(2) of this Agreement, along with potential funding from the State and Federal governments, will be sufficient to implement the Project and repay the Lending Agencies for the loans made under this Agreement, without interest. The Parties also intend for SJAFCA to reimburse the Cities of Lathrop and Manteca for any general, enterprise, or other funds expended by the Cities in furtherance of the Project prior to its transfer to SJAFCA.

C. At its discretion and at any time prior to the June 30, 2029 deadline, SJAFCA may make payments to Lending Agencies for the loans when and if doing so will not hinder advancement and completion of the Project. Unless the loans are forgiven pursuant to subsection 6D below SJAFCA shall repay all loans from Lending Agencies by June 30, 2029.

D. The Lending Agencies agree that the loans provided for under this Agreement will be forgiven if SJAFCA is unable to secure adequate permanent funding sources for the entirety of the Project. The SJAFCA Board shall make any determination that it is unable to secure adequate permanent funding for the entirety of the Project no earlier than January 1, 2021 and no later than December 31, 2023, and shall make any such determination based upon the then-current funding streams and efforts to develop funding streams for SJAFCA. If SJAFCA makes such a determination, it shall promptly provide notice to the Lending Agencies, and upon providing such notice the loan shall be deemed forgiven.

7. Additional Provisions.

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Any action to compel arbitration or to enforce an arbitrator's decision pursuant to Section 7.K. shall be brought in San Joaquin Superior Court.

B. Time is of the Essence. For purposes of this Agreement, time is of the essence.

C. Entire Agreement; Amendment. This Agreement constitutes the entire Agreement among the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings of the Parties regarding the subject matter

hereof. This Agreement may not be amended except by the mutual written consent of all the Parties.

D. Waiver. Any provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a writing signed by such Party stating that it waives such provision. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver.

E. Severability. If any provision of this Agreement is held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect provided that the severance of the invalid or unenforceable provisions does not result in a material failure of consideration under this Agreement to any party hereto.

F. Headings. The headings of this Agreement are included for convenience only and shall not affect the construction or interpretation of the Agreement.

G. Counterparts. This Agreement may be executed in one or more counterparts, including facsimile, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

H. Authority. The undersigned certify that they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this Agreement and able to legally bind such Party or Parties hereto.

I. Interpretation. This Agreement shall be deemed to have been prepared equally by all the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for any one Party on the basis that another Party prepared it.

J. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (1) on the date delivered by hand; (2) the next business day following the date sent by overnight delivery service or sent by facsimile; or (3) on the third business day after mailing if deposited in the U.S. mail to the following addresses:

(1) Any notice to be given to the County of San Joaquin should be addressed as follows (or to such other address as County of San Joaquin may specify from time to time):

County of San Joaquin
ATTN: Public Works Director
P.O. 1810
Stockton, CA 95201

(2) Any notice to be given to the City of Lathrop should be addressed as follows (or to such other address as the City of Lathrop may specify from time to time):

Teresa Vargas, City Clerk
390 Towne Centre Drive
Lathrop, CA 95330
Email: tvargas@ci.lathrop.ca.us
Phone: (209) 941-7230

(3) Any notice to be given to the City of Manteca should be addressed as follows (or to such other address as the City of Manteca may specify from time to time):

Lisa Blackmon, City Clerk
1001 W. Center Street
Manteca, CA 95337

Email: lblackmon@ci.manteca.ca.us
Phone: 209.456.8017

(4) Any notice to be given to the City of Stockton should be addressed as follows (or to such other address as the City of Stockton may specify from time to time):

Bret Hunter, City Clerk
425 N. El Dorado Street, 1st Floor
Stockton, CA 95202
Phone: (209) 937-8459
Fax: (209) 937-8447
bret.hunter@stocktonca.gov

(5) Any notice to be given to SJAFCA should be addressed as follows (or to such other address as SJAFCA may specify from time to time):

Executive Director
22 E. Webber Ave., Room 301
Stockton, CA 95202
(209) 937-8211

K. Arbitration. All disputes arising out of this Agreement shall be submitted to final and binding arbitration. A Party seeking to arbitrate a dispute arising out of this Agreement must notify the other Parties to the dispute in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within 1 year of discovery of the last event giving rise to the claim for breach or enforcement. Any such timely and properly noticed

claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. Each Party that is a party to the dispute shall, before arbitration commences, pay equal shares of the entire expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all the arbitration costs, but no attorneys' fees incurred in connection with the arbitration, shall be awarded. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision.

IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signature of their authorized representatives below:

COUNTY

CITY OF LATHROP

By: Robert V. Elliott 6/18/2018
ROBERT V. ELLIOTT Chair,
Board of Supervisors
County of San Joaquin,
State of California

by: _____
Mayor

ATTEST: MIMI DUZENSKI
Clerk of the Board of Supervisors
of the County of San Joaquin,
State of California

Date: _____

Attest and witness:

By: Mimi Duzenski
Clerk



Date: 6/18/18

By: _____

APPROVED AS TO FORM:
By: Lawrence P. Meyers
LAWRENCE P. MEYERS
Deputy County Counsel

Approved as to Form:

City Attorney

ATTACHMENT C

claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. Each Party that is a party to the dispute shall, before arbitration commences, pay equal shares of the entire expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all the arbitration costs, but no attorneys' fees incurred in connection with the arbitration, shall be awarded. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision.

IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signature of their authorized representatives below:

Date: _____

COUNTY OF SAN JOAQUIN

Attest and witness:

MIMI DUZENSKI

ROBERT V. ELLIOTT

By: _____
Clerk

by: _____
Chair, Board of Supervisors

Approved as to Form:

By: _____
LAWRENCE P. MEYERS
Deputy County Counsel



Date: _____

CITY OF LATHROP

Attest and witness:

By: TERESA VARGAS, City Clerk

By: SONNY DHALIWAL, Mayor

Approved as to Form:

By: SALVADOR NAVARRETE, City Attorney

Date: _____

CITY OF MANTECA

Attest and witness:

Lisa Blackmon
City Clerk

by: Tim Ogden
City Manager

Approved as to Form:

John Brinton
City Attorney

Date: _____

CITY OF STOCKTON

Attest and witness:

By: Careal Smith
Deputy City Clerk


Michael Hoff
by: _____
Mayor

Approved as to Form:

Tessa Myer
City Attorney

Date: _____

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

Attest and witness:

By: _____

by: Scott L. Shapiro
Acting Executive Director

Approved as to Form:

General Counsel

Date: _____

CITY OF MANTECA

Attest and witness:

Lisa Blackmon
City Clerk

by: Tim Ogden
City Manager

Approved as to Form:

John Brinton
City Attorney

Date: _____

CITY OF STOCKTON

Attest and witness:

By: _____

by: _____
Mayor

Approved as to Form:

City Attorney

Date: 6/29/10

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

Attest and witness:

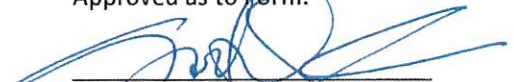


By: Bridget Conger



by: Scott L. Shapiro
Acting Executive Director

Approved as to Form:



General Counsel

Date: 6/20/18

CITY OF MANTECA

Attest and witness:

Lisa Blackmon
Lisa Blackmon
City Clerk

[Signature]
by: Tim Ogden
City Manager

Approved as to Form:

By: [Signature]
John Brinton
City Attorney

Date: _____

CITY OF STOCKTON

Attest and witness:

By: _____

by: _____
Mayor

Approved as to Form:

City Attorney

Date: _____

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

Attest and witness:

By: _____

by: Scott L. Shapiro
Acting Executive Director

Approved as to Form:

General Counsel