

**MEMORANDUM OF UNDERSTANDING**

**THE CITIES OF LATHROP, MANTECA, STOCKTON, THE  
COUNTY OF SAN JOAQUIN AND RECLAMATION DISTRICT (RD) 17**

This Memorandum of Understanding ("MOU") is entered into this 16<sup>th</sup> day of May, 2016, by and among the City of Lathrop, a general law California municipal corporation ("Lathrop"), the City of Manteca, a general law California municipal corporation ("Manteca"), the City of Stockton ("Stockton"), the County of San Joaquin, a political subdivision of the State of California ("San Joaquin County") and Reclamation District, a reclamation district ("RD 17").

**RECITALS**

**A.** RD 17 covers land within unincorporated San Joaquin County, and portions of the cities of Lathrop, Manteca, and Stockton as shown on **Exhibit A** attached hereto and incorporated by reference (hereinafter referred to as the "RD 17 Basin").

**B.** Since 2008, RD 17 has worked to implement its plan for flood protection for the RD 17 Basin, and specifically, has undertaken levee seepage repairs for the existing federal project levees protecting the RD 17 Basin.

**C.** San Joaquin County, Lathrop, Manteca and Stockton (each a "Land Use Agency," and collectively, the "Land Use Agencies") have each adopted or are in the process of adopting amendments to their respective general plans and zoning ordinances in order to comply with the requirements of the Central Valley Flood Protection Act of 2008, enacted by Senate Bill (SB) 5 in 2007, as amended by subsequent legislation regarding the provision of an urban level of flood protection ("ULOP").

**D.** RD 17 and the Land Use Agencies have developed a plan that addresses the completion of the next phase of flood protection involving the provision of 200-year flood control for the RD 17 Basin by 2025. The RD 17 flood control improvements consists of two components: (1) RD 17 Levee Seepage Repair Project ("LSRP") and (2) RD 17 Levee Improvements to achieve Urban Level Design Criteria ("ULDC") 200 year requirements (the "Fix-In-Place Project") to achieve the ULOP.

**E.** Lathrop, Manteca and RD 17 have retained a consultant team to undertake the initial planning and design of the Fix-In-Place Project, and to prepare the necessary analyses and documentation including, but not limited to, an engineers' report, finance plan, and grant application packages for the Fix-in-Place Project ("Planning and Design Work") so that the Land Use Agencies may each adopt adequate progress findings, as necessary, in accordance with State Law.

**F.** The intent of this MOU is to reach conceptual agreement for broad collaboration among the Land Use Agencies and RD 17 regarding the Planning and Design Work and implementation of the 200-year flood protection project in the RD 17 Basin.

**G.** The objective of this MOU is to document the Land Use Agencies and RD 17's commitment to work together in order to evaluate and explore options for the funding, adoption and implementation of the Fix-in-Place Project (the "Funding and Implementation").

**H.** The Land Use Agencies have mutual policy and economic interests in accommodating opportunities for long-term development while proceeding with the Funding and Implementation for the provision of 200-year flood protection for the RD 17 Basin.

**I.** The Land Use Agencies and RD 17 desire to establish principles to form the parameters of a future agreement or agreements encompassing the manner in which the local agencies will continue to plan, design, evaluate, fund and implement the Fix-in-Place Project for the RD 17 Basin.

**J.** The Land Use Agencies and RD 17 desire to pursue jointly proposed common principles to define the parameters of a future agreement or agreements encompassing the manner in which they evaluate, fund and construct the Fix-in-Place Project to provide 200 year flood protection for RD 17 and the 46,000 residents, two major highways, two major railroads, San Joaquin County Hospital, Jail, and billions of dollars of other public and private property in the RD 17 Basin by 2025 in a manner consistent with the Land Use Agencies' plans and policies.

**K.** The Land Use Agencies acknowledge that approval of this MOU changes no existing land uses previously approved by the Land Use Agencies nor commits the Land Use Agencies to specific land uses, or to agreement on any specific development projects within the RD 17 Basin, or to any particular funding option for the Fix-in-Place Project.

**NOW, THEREFORE**, in consideration of the above Recitals, which are an essential part of the Parties' MOU, and are therefore incorporated by reference into the agreement set forth below, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, it is hereby agreed as follows:

#### **AGREEMENT**

**1. Local Flood Management Agency.** Lathrop, Manteca and RD 17 currently are serving as the local flood management agency for purposes of engaging necessary consultants and coordinating efforts to prepare the information, analysis and documentation required by the Central Valley Flood Protection Act of 2008 (the "Local Flood Management Agency") in order to support the Land Use Agencies' respective findings of adequate progress pursuant to the Central Valley Flood Protection Act of 2008. The Local Flood Management Agency will undertake the necessary steps and complete the documentation set forth in the Department of Water Resources ("DWR") guidance for the minimum criteria for cities and counties to comply with urban level of flood protection requirements set forth in State Law.

**2. Collaboration and Cooperation.** The Land Use Agencies and RD 17 agree to work together on the Planning and Design and development of the RD 17 Fix-in-Place Project. The principles set forth herein are intended to guide further discussions and the ultimate negotiation of joint powers agreement between some or all of the Land Use Agencies and RD 17 in furtherance of the Fix-in-Place Project. It is recognized that certain of the terms used are subject to further definition and refined during the process of negotiation. It is the intent of the Parties to work cooperatively to establish a review process, by agreement to cooperatively approach flood protection in the RD 17 Basin in a manner consistent with the wise use of the floodplain.



3. **Analysis of Funding Streams.** The Parties agree to work together to develop a framework for the evaluation of RD 17 Basin-wide funding mechanisms for Planning and Design, implementation and ongoing development of the Fix-in-Place Project that may be adopted by each of the participating Land Use Agencies' jurisdictions.

4. **Implementation Plan.** The Parties agree to outline a process and a schedule that identifies milestones for implementing the identified funding mechanisms in accordance with the Conceptual Schedule set forth in Exhibit B attached hereto and incorporated herein by reference into this MOU.

5. **Governance.** The Parties agree to evaluate a governance structure involving the establishment of a new or expanded existing joint powers authority with the responsibility for implementation, funding and/or financing of the Fix-in-Place Project.

6. **Grant Funding.** In recognition of the critical nature of flood protection in RD 17, the Local Agencies will collaborate with RD 17 to pursue State and Federal funding for improvements to the RD 17 levees with a goal that the Fix-in-Place Project will meet the standards identified in the State Plan of Flood Control in accordance with SB 5.

(a) The Land Use Agencies will also consider grant funding opportunities that could be used to target advanced acquisition of agricultural properties from willing sellers, or fund multi-benefit habitat restoration and open space objectives in order to enhance opportunities for State and federal cost sharing in the Fix-in-Place Project.

(b) The Land Use Agencies will consider grant funding opportunities that could be used to reduce the potential for future development in areas where deep flooding could occur.

7. **Joint Powers Agreement.** The Parties will seek to enter into a new or amended Joint Exercise of Powers Agreement ("JPA") to formalize the principles set forth above.

8. **Entire Agreement.** The Parties agree that this MOU sets forth the entire agreement between them relating to the subject matter and that this document merges and supersedes all prior discussions, agreements, understandings, and representations between them relating to the subject matter of this MOU. Notwithstanding the foregoing, this MOU shall not supersede or replace any other written agreements between the Parties regarding any subject matter not otherwise covered by this MOU.

9. **Warranty of Authority.** Each Party represents and warrants that it has the right, power and authority to execute this MOU. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this MOU for it, to enter into this MOU.

10. **Legal Representation.** The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this MOU and the matters and claims set forth herein, and that each of them has read this MOU and is fully aware of its contents and its legal effect. Neither Party is relying on any statement of the other Party outside the terms set forth in this Agreement as an inducement to enter into this MOU.

**11. Joint Preparation.** The language of all parts of this MOU shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the MOU, or any part thereof, shall be applicable or invoked.

**12. Equal Dignity.** This MOU may not be altered, amended, modified or otherwise changed except in writing duly executed by an authorized representative of each of the Parties.

**13. California Law.** This MOU shall be governed by and construed in accordance with the laws of the State of California, without reference to choice of laws principles.

**14. Counterparts.** This MOU may be executed in multiple counterparts (each of which is to be deemed original for all purposes).

**15. Captions.** Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this MOU.

**16. Effective Date.** The Effective Date for purposes of the Local Flood Management Agency is upon execution by Lathrop, Manteca and Reclamation District 17. Notwithstanding the foregoing, the Effective Date for purposes of the MOU shall be date when all of the Parties have executed this Memorandum of Understanding.

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IN WITNESS WHEREOF, Lathrop, Manteca, Stockton, San Joaquin County and Reclamation District 17 have executed this Memorandum of Understanding.

**CITY OF LATHROP**  
A Municipal Corporation

By   
**STEPHEN T. SALVATORE**

APPROVED AS TO FORM:

  
City Attorney

  
City Clerk

**CITY OF MANTECA**  
A Municipal Corporation


By \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

**RECLAMATION DISTRICT 17**  
A Public Agency

By 

APPROVED AS TO FORM:

  
Counsel

**COUNTY OF SAN JOAQUIN**  
A Political Subdivision

By \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Clerk of the Board

**CITY OF STOCKTON**  
A Municipal Corporation

By \_\_\_\_\_

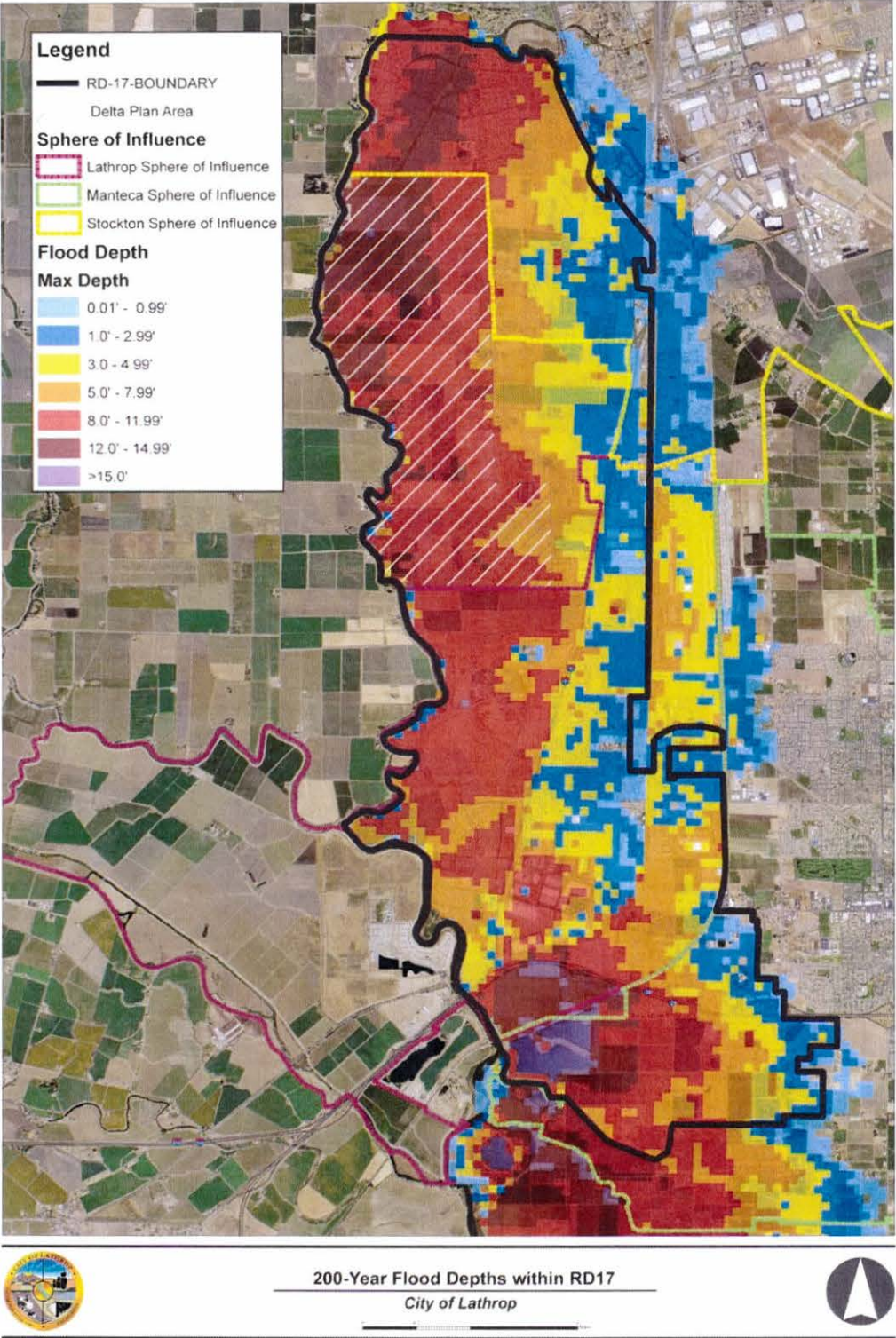
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk



EXHIBIT A



**EXHIBIT B****RD 17 BASIN URBAN LEVEL OF FLOOD PROTECTION  
FIX-IN-PLACE PROJECT****CONCEPTUAL SCHEDULE FOR GOVERNANCE AND FUNDING**

<b>Activity</b>	<b>Start</b>	<b>End</b>	<b>Duration</b>
MOU Principles	April 14, 2016	May 2, 2016	2 weeks
Finalize ULOP Adequate Progress Report	Ongoing	April 30, 2016	4 months
Enter into MOU	May 2, 2016	May 31, 2016	1 month
Adopt ULOP Adequate Progress Report		July 2, 2016	N/A
Develop Funding/Governance Evaluation Framework	April 2016	August 2016	4 months
Implement Governance Entity			
<ul style="list-style-type: none"> <li>• <i>Start Joint Powers Agreement (JPA) Process</i></li> </ul>	June 1, 2016	June 30, 2016	1 month
<ul style="list-style-type: none"> <li>• <i>Form RD 17 Levee Improvement Authority (LIA)</i></li> </ul>	August 2016	December 2016	5 months
Implement Funding Mechanisms			
<ul style="list-style-type: none"> <li>• <i>Regional Impact Fee</i></li> </ul>	January 2017	June 2017	6 months
<ul style="list-style-type: none"> <li>• <i>Overlay Assessment District</i></li> </ul>	January 2017	June 2018	18 months
<ul style="list-style-type: none"> <li>• <i>IFD Adoption and EIFD Formation</i></li> </ul>	January 2017	September 2017	9 months
Implement Financing Entity / Mechanism			
<ul style="list-style-type: none"> <li>• <i>Amend Current RD 17 PFA / Confirm Financing Entity</i></li> </ul>	2022	2022	3 months
<ul style="list-style-type: none"> <li>• <i>Issued Hybrid Financing Debt</i></li> </ul>		2023	N/A