

AGREEMENT FOR COLLECTION OF  
 SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
 MOSSDALE TRACT AREA REGIONAL URBAN LEVEL OF  
 FLOOD PROTECTION DEVELOPMENT IMPACT FEE

This Agreement for Collection of San Joaquin Area Flood Control Agency Mossdale Tract Area Regional Urban Level of Flood Protection Development Impact Fee (“Agreement”) is made and entered into on the date it is effective pursuant to Section 12 by and among the following parties:

- a. City of Stockton, hereinafter referred to as "Stockton";
- b. County of San Joaquin, hereinafter referred to as "County";
- c. City of Lathrop, hereinafter referred to as “Lathrop;” and
- d. City of Manteca, hereinafter referred to as “Manteca.”

A signatory to this Agreement is referred to herein as a Party, and collectively each Party is referred to as the Parties.

RECITALS

WHEREAS, in January of 2018, Stockton, County, the San Joaquin County Flood Control and Water Conservation District (“SJCFWCWD”), Lathrop, and Manteca executed an Amended and Restated Joint Exercise of Powers Agreement (“JEPA”) to reform the San Joaquin Area Flood Control Agency (“Agency”) with a common goal of expanding the Agency to allow a coordinated effort to reduce flood risk in the Mossdale Tract Area (the “Program”).

WHEREAS, SJAFCA, through certain state legislation and through the execution of the Amended and Restated Joint Exercise of Powers Agreement, has legal authority to prescribe, revise and collect fees as a condition of development of land (JEPA Section 7.m) for the purpose of assisting in the financing of flood control facilities, including the authority to make such fees

applicable to development of land within the County, Stockton, Lathrop, and Manteca (collectively, “the Land Use Agencies”).

WHEREAS, SJAFCA has exercised this authority by approving Resolution 18-\_\_\_\_\_ Establishing the San Joaquin Area Flood Control Agency Mossdale Tract Area Regional Urban Level of Flood Protection Development Impact Fee ("DIF Resolution"), which is attached hereto as Exhibit A and incorporated herein by this reference, for the purpose of assisting in the financing of levee improvements and related flood risk reduction measures necessary to provide at least a 200-year level of flood protection to lands within the 200-year floodplain along the San Joaquin River in the Mossdale Tract Area ("Program Area") and to thereby offset the increase in damageable property that is placed in the levee protected floodplain as new development occurs in this area.

WHEREAS, SJAFCA has called for the preparation of the Mossdale Tract Area Regional Urban Level of Flood Protection Development Impact Fee Nexus Study (“Nexus Study”) which is attached as Exhibit 1 to the DIF Resolution, that describes and determines the applicable Mossdale Tract Area Regional Urban Level of Flood Protection Development Impact Fee (“DIF”) and sets forth the required findings required by Government Code Section 66000 et. seq.

WHEREAS, SJAFCA has requested that the Land Use Agencies, as a condition of issuance of a building permit for new development in the Program Area, as shown on Exhibit 1 to the DIF Resolution (Figure 1 in the Nexus Study), that is within each of the Land Use Agency’s land use authority, collect and transmit to SJAFCA the applicable DIF for the development project for which such building permit is to be issued.

WHEREAS, the Land Use Agencies are willing and desire to collect the DIF and to transmit the DIF to SJAFCA, and the Land Use Agencies and SJAFCA desire to set forth the standards applicable to the collection of the DIF.

### COVENANTS

In consideration of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated in this Agreement by reference.

2. Collection and Transmission of DIF. Commencing January 8, 2019, the Land Use Agencies shall collect the DIF as a condition of issuance of a building permit for any building, for which a building permit is required, located in the Program Area (as shown in Exhibit 1 to the DIF Resolution). The Land Use Agencies shall transmit to SJAFCA all amounts of the DIF that have been collected, minus the hold-back processing fee for the Land Use Agencies adopted pursuant to the Nexus Study. The methodology for computing the DIF, together with other procedural criteria, are specified in the Nexus Study.

3. Deposit of DIF. SJAFCA shall establish a separate capital facilities account into which the Land Use Agencies shall, at least quarterly, deposit the DIF funds collected by the Land Use Agencies. Any interest earned on the DIF while held by the Land Use Agency shall also be deposited by the Land Use Agency.

4. Periodic Update of the DIF. SJAFCA shall promptly notify the Land Use Agencies following any adjustments made by SJAFCA to the DIF. The Land Use Agencies shall commence collection of the adjusted DIF sixty (60) calendar days following such notification.

5. Application of Fee Crediting and Reimbursement Policies. The Parties agree that in order to have a fair application of this Agreement, the DIF and the funds it will generate within each Land Use Agency, it is necessary to agree to principles which will be applied by any Land Use Agency when certain conditions occur. In such cases, the Land Use Agencies agree to apply the principles contained in Exhibit B to this Agreement. The relevant conditions are as follows:

- a. The Land Use Agency has previously collected funds pursuant to a funding agreement with a developer in advance of when the fee would otherwise be due pursuant to the DIF Resolution and the funds are to be used to plan, design, and/or construct a portion of the Program; or,
- b. The Land Use Agency has entered into an agreement with a developer to plan, design and/or construct a portion of the Program; or,

- c. The Land Use Agency itself has funded the planning, design and/or construction of a portion of the Program.

6. Refunds. In the event that a Land Use Agency collects the DIF or a portion of the DIF in error, the Land Use Agency will recalculate the correct DIF amount, process a refund to the customer, if necessary, and notify SJAFCA of this action. SJAFCA shall promptly refund any amount due to the Land Use Agency as a result of such error, or upon request of the Land Use Agency shall work with the Land Use Agency to true-up amounts owing in conjunction with the Land Use Agency forwarding future DIFs. In the event that a Land Use Agency requests that SJAFCA process a refund due to a building permit expiring without construction taking place, SJAFCA shall promptly process such refund to the Land Use Agency minus any costs incurred by SJAFCA in processing such refund.

7. Payment of DIF under Protest. Pursuant to Title 7, Division 1, Chapter 9 of the California Government Code, commencing with §66020, any aggrieved landowner shall be entitled to pay the applicable DIF to a Land Use Agency under protest. The protest procedures set forth therein shall apply to the DIF paid under protest.

8. Appeal. SJAFCA's Board of Directors shall hear all appeals for waiver or reduction in SJAFCA's DIF. The Board of Directors may adopt such policies as it wishes for the processing of the appeal and shall have the sole authority to grant or deny the appeal. Within 5 business days following the final action of its Board of Directors regarding an appeal, SJAFCA shall notify the affected Land Use Agency in writing of its determination.

9. Compensation of Land Use Agencies. In consideration for collecting the DIF and consistent with the hold-back provided for in Section 2, SJAFCA shall reimburse the Land Use Agencies for their cost of time and materials for calculating, reporting, collecting, and processing functions. Such costs shall include the time and materials expended by, but not limited to, employees of the relevant Community Services Department, the Auditor-Controller's department, the Land Use Agencies' administrative office, and the information technology department. The Parties agree that a charge of 3% of the DIF is a reasonable estimate of the Land Use Agencies' cost of time and materials for calculating, reporting, collecting, and processing of the DIF. Each Land Use Agency and SJAFCA may agree to a different amount that reflects the Land Use

Agency's actual cost of collection by executing a letter agreement without the need to amend this Agreement.

10. Indemnification.

a. Except as provided in Section 10.b., SJAFCA agrees to indemnify, hold harmless and defend the Land Use Agencies, their Board of Supervisors or City Council, officers, directors, agents and employees from and against any and all demands, liabilities, claims, actions, costs, damages, losses, litigation or expenses (including attorney's fees) arising out of or in any way related to, directly or indirectly, any action taken by the Land Use Agencies to collect the DIF and/or their performance of the obligations of this Agreement. This indemnification shall extend and apply to any claim, demand, or litigation pertaining to the lawfulness or validity of the SJAFCA DIF.

b. Each Land Use Agency agrees to indemnify, hold harmless and defend SJAFCA, its Board of Director, officers, agents and employees from and against any and all demands, liabilities, claims, actions, costs, damages, losses, litigation or expenses (including attorney's fees) arising out of or in any way related to, directly or indirectly, any criminal, reckless, or wrongful action taken by the Land Use Agency or its employees in the collection or processing of the DIF.

11. Notices. Notice to be provided to any Party to this Agreement arising out of matters pertaining to this Agreement shall be addressed as follows:

For County and SJCFWCWD:

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

For City of Lathrop:

City of Lathrop

ATTN: Teresa Vargas, City Clerk  
390 Towne Centre Drive  
Lathrop, CA 95330

For City of Manteca:

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

For City of Stockton:

City of Stockton Community Development Department  
ATTN: Community Development Director  
424 N. El Dorado Street  
Stockton, CA 95202

Any party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other Parties, which shall be effective upon receipt.

12. Term. This Agreement shall be effective once executed by SJAFCA and one of the Land Use Agencies, as to SJAFCA and that Land Use Agency, and then shall be effective as to each additional Land Use Agency once executed by that Land Use Agency, and shall end when either (i) SJAFCA terminates the Agreement in accordance with Section 13, or (ii) all four Land Use Agencies have terminated the Agreement in accordance with Section 13.

13. Withdrawal from Agreement. Any Land Use Agency that has executed this Agreement, or SJAFCA, may withdraw from this Agreement by giving the other Parties at least six (6) months written notice of withdrawal. In the event of withdrawal by a Land Use Agency, that Land Use Agency shall, within 10 days of effective withdrawal, cause to be deposited into SJAFCA's separate capital facilities account all DIF funds collected prior to withdrawal.

14. Modifications. This Agreement contains the entire understanding of the Parties and no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by all Parties. Waiver by any Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

15. Governing Laws and Jurisdiction. This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in the Superior Court of San Joaquin County, California.

16. Assignment; Binding on Successors. The rights and duties of the Parties may not be assigned or delegated without the written consent of all other Parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto, respectively. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Agency then in effect.

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

18. Entire Agreement. This Agreement constitutes the entire contract between the Parties regarding the collection, deposit, and reporting of the DIF. Any prior agreements, regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

19. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

20. Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by SJAFCA and at least one of the Land Use Agencies.

21. Interpretation. For purposes of this Agreement, references to “he” shall mean and include “she,” references to “him” shall mean and include “her,” and references to “his” shall mean and include “hers.”

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above-written.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above-written.

COUNTY OF SAN JOAQUIN  
a political subdivision of the State of California

CITY OF STOCKTON,  
a municipal Corporation

\_\_\_\_\_  
By: ROBERT V. ELLIOTT  
Title: Chairman, Board of Supervisors

\_\_\_\_\_  
By:  
Title:

ATTEST: \_\_\_\_\_  
Clerk of the Board of Supervisors  
of the County of San Joaquin,  
State of California

ATTEST: \_\_\_\_\_  
Clerk of the City of Stockton

\_\_\_\_\_  
By: MIMI DUZENSKI  
Title: Clerk

\_\_\_\_\_  
By:  
Title:



RECOMMENDED FOR APPROVAL:

CITY OF LATHROP,  
a municipal Corporation

\_\_\_\_\_  
By: KRIS BALAJI  
Title: Director of Public Works

\_\_\_\_\_  
By:  
Title:

APPROVED AS TO FORM

ATTEST:  
Clerk of the City of Lathrop

\_\_\_\_\_  
By: LAWRENCE P. MEYERS  
Title: Deputy County Counsel

\_\_\_\_\_  
By:  
Title:

SAN JOAQUIN COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

APPROVED AS TO FORM:  
\_\_\_\_\_, City Attorney

\_\_\_\_\_  
By: ROBERT V. ELLIOTT  
Title: Chairman, Board of Supervisors

\_\_\_\_\_  
Title:

ATTEST  
Clerk of the Board of Supervisors of the  
San Joaquin County Flood Control and  
Water Conservation District

CITY OF MANTECA,  
a municipal Corporation

\_\_\_\_\_  
By: MIMI DUZENSKI  
Title: Clerk

\_\_\_\_\_  
By:  
Title:

ATTEST: \_\_\_\_\_  
Clerk of the City of Lathrop

APPROVED AS TO FORM:  
\_\_\_\_\_, City Attorney

\_\_\_\_\_  
By:  
Title:

SAN JOAQUIN AREA FLOOD CONTROL  
AGENCY

APPROVED AS TO FORM:  
Agency Counsel

---

By: CHRIS ELIAS  
Title: Executive Director

---

By: Scott L. Shapiro

EXHIBIT A  
DIF Resolution  
*(To be inserted once approved)*

October 22, 2018

## EXHIBIT B

### SAN JOAQUIN AREA FLOOD CONTROL AGENCY MOSSDALE TRACT AREA REGIONAL URBAN LEVEL OF FLOOD PROTECTION LEVEE IMPACT FEE CREDIT & REIMBURSEMENT POLICIES

#### UNDERLYING ASSUMPTIONS

The following are the underlying assumptions that predicate the establishment of credits and reimbursements:

- All funding, in-kind services, or construction of facilities in furtherance of providing an Urban Level of Flood Protection to Mossdale Tract Area, "Prior Advance Funding," was provided in advance of the Reclamation District 17 Interim Levee Impact Fee (Interim Levee Fee) and San Joaquin Area Flood Control Agency (SJAFCA) Regional Levee Fee (Regional DIF) (collectively, the Levee Fee) on behalf of development projects will be identified by the tables in a "Credit & Reimbursement Analysis," to be prepared by SJAFCA.
- All Prior Advance Funding of the Levee Fee will be proportionately allocable to the individual tract maps/phases/units/villages in projects based upon a project's gross developable acreage.
- Development within a project is assumed to have an obligation to fund levee improvements for all undeveloped gross developable acreage as of April 7, 2017 in Lathrop and April 22, 2017 in Manteca, the effective dates of the Interim Fees adopted by Lathrop and Manteca.
- Units within a project are assumed to have been previously absorbed if a permit for the unit has been applied for before January 8, 2019, the effective date of SJAFCA's Regional DIF.
- The Levee Fee obligation for all remaining developable acreage in a project absorbed before January 8, 2019 are the Initial Fee Rates as identified in the November 8, 2018, Mossdale Tract Area Regional Urban Level of Flood Protection Levee Impact Fee Nexus Study as adopted by SJAFCA Resolution \_\_\_\_-18 on November 8, 2018 (reference Table 1 of that Nexus Study).
- The credit for Prior Advance Funding will be expressed in terms of GDAs and will be determined by taking the amount of prior advance funding and dividing it by the Initial Fee Rates per GDA. The amount of GDA credit will be set by this methodology and will not be recalculated in the future by the escalating fee rate.
- All permits that have previously been applied for before January 8, 2019, (i.e., absorbed) are assumed to have been fully funded with credit from prior advance funding and no additional Levee Fees will be required to be paid for these units.
- For multiple projects that are being developed by a common landowner, if one project is determined to have advance funded Levee Fees in excess of its obligation and is due a reimbursement, the reimbursement will be applied and added to the credit of the next project currently underway with the consent of the landowner.

October 22, 2018

### CREDITING POLICY FOR PRIOR ADVANCE FUNDING

The Crediting Policy will allow for the use of the accumulated credit on a proportionate basis as the remainder of a project is developed. The basis for the proportionality will be the ratio of Remaining Credit Acreage to Total Remaining Acres to be developed.

- “Remaining Credit Acreage” will be defined as the credit accumulated by the prior advance funding less the amount of credit utilized by units that have been absorbed prior to January 8, 2019.
- “Total Remaining Acres” to be developed will be defined as the difference between the total developable GDAs in a project and the amount of acres absorbed before January 9, 2019, or as subsequently revised by the Land Use Agency and the Landowner.

#### Use of Prior Advance Funding Credit

As homes and/or projects are constructed by permits applied for after January 9, 2019, the landowner will fund a portion of the Levee Fee based on the relative proportionality between the remainder of a project **not** able to be funded from the Remaining Credit Acreage and the Total Remaining Acres left in the project after all previously absorbed units.

To implement this policy, the Land Use Agency will calculate this remaining amount of the Levee Fee due as the individual building permits are issued for units to be constructed in the project. Collection of the Levee Fee can be deferred consistent with any adopted fee deferral program by the Land Use agency.

### CREDITING POLICY FOR CONSTRUCTION OF FACILITIES

Any Developer constructed facilities will be constructed pursuant to an agreement entered into between the Land Use Agency and SJAFCA. The agreement will specify the maximum amount of credit that will be afforded for the construction of the facility which will be the lesser of the estimated cost of the facility which was the basis for the development fee program or the Developer’s actual construction cost (“Constructed Facilities Funding Credit”). Constructed Facilities Funding Credit will be documented and provided when a completed facility is accepted by the appropriate entity.

#### Use of Constructed Facilities Funding Credit

Use of Constructed Facilities Funding Credit will be consistent with the “Use of Advance Funding Credit” described above.

### REIMBURSEMENT POLICY FOR PRIOR ADVANCE FUNDING

#### For Development Projects due a reimbursement as a result of funding in excess of a Project’s Levee Impact Fee Obligation

The reimbursement policy will be consistent with the following underlying principles.

- Reimbursements will be only be paid from levee impact fees collected from other development projects.
- No reimbursements should be paid to a party advancing funds into the levee improvement program until all levee improvement project costs are paid and the levee improvement program has been completed and certified, unless otherwise determined by SJAFCA that payment of such reimbursements is financially feasible and legally defensible by SJAFCA.

*October 22, 2018*

- The Board should make decisions that consider the impact to the Project and the services provided to SJAFCA beneficiaries at large.
- The Board should make decisions that consider the proportionality of the investment made into the levee improvement program.
- The Board should consider the timing of repayment of capital to those investing in the levee improvement program.

**For Land Use Agencies due a reimbursement as a result of funding provided to advance the Levee Improvement Program in advance of January 1, 2018**

The reimbursement policy will be consistent with the following underlying principles.

- No reimbursements should be paid from development fees to a land use agency that advanced funds into the levee improvement program until all levee improvement project costs are paid and the levee improvement program has been completed and certified, unless otherwise determined by SJAFCA that payment of such reimbursements is financially feasible and legally defensible by SJAFCA.
- The Board should make decisions that consider the impact to the Project and the services provided to SJAFCA beneficiaries at large.
- The Board should make decisions that consider the proportionality of the investment made into the levee improvement program.
- The Board should consider the timing of repayment of capital to those investing in the levee improvement program.

**For Land Use Agencies due repayment pursuant to the Interim Seed Money Funding Agreement dated June 12, 2018**

- Repayment will be made consistent with Section 6 of that Agreement.