

CITY OF YUBA CITY
STAFF REPORT

Date: April 5, 2022
To: Honorable Mayor & Members of the City Council
From: Administration Department
Presentation By: Diana Langley, City Manager

Summary

Subject: Transfer and Indemnification Agreement Between the City of Yuba City and Sutter Butte Flood Control Agency

Recommendation: Adopt a Resolution authorizing the Mayor to execute a Transfer and Indemnification Agreement Between the City of Yuba City and Sutter Butte Flood Control Agency (SBFCA) to transfer \$1,700,000 of Levee Impact Fees from the City to SBFCA, subject to modifications by the City Manager upon approval of the City Attorney as to legal form

Fiscal Impact: The City currently has available \$2,221,610 of Levee Impact Fees. Transferring \$1,700,000 to SBFCA will leave the City with \$521,610 for future studies as necessary for flood protection compliance.

Purpose:

To continue to support the efforts to achieve and maintain 200-yr flood protection for Yuba City.

Council's Strategic Goal:

This supports all of Council's strategic goals as flood protection is vital to the ongoing safety and viability of the community.

Background:

The Sutter-Butte Basin (Basin) covers 300 square miles bordered by the Cherokee Canal to the north (near the Thermalito Afterbay), the Sutter Buttes to the west, the Sutter Bypass to the southwest, and the 44-mile long Feather River to the east. The Sutter Butte Flood Control Agency (SBFCA) is a joint powers agency formed in 2007 by the Counties of Butte and Sutter, the Cities of Biggs, Gridley, Live Oak, and Yuba City, and Levee Districts 1 and 9. SBFCA leads the planning and implementation efforts in the Basin to reduce the risk of catastrophic, riverine flooding.

In October 2007, the City Council adopted Resolution 07-101, adopting new Development Impact Fees that included a Levee Fee. The purpose of the Levee Fee was to fund levee improvements/capital costs attributable to new development to ensure that levees are adequately constructed/reinforced to protect new residential and non-residential development. The AB1600 study evaluated facilities

required to serve the existing Sphere of Influence, estimated costs, allocated the cost to both existing and future development, and calculated the levee fees by land use.

In addition to the City's Levee Fee, in June 2010, property owners within Sutter and Butte Counties approved an Assessment District to fund the local share of improvements to both the Feather River West Levee and the Sutter Bypass East Levee to provide properties within the Sutter-Butte Basin with "200-year" and "100-year" flood protection. SBFCA has completed nearly all of the Feather River West Levee Improvement Project at a total cost of approximately \$331 million, with the local share being \$80 million.

SBFCA reviewed the City's Levee Fee and proposes to implement a Regional Levee Fee Program (Regional Fee) that would be reflective of the full scope of SBFCA's levee improvement program, designed to work in concert with SBFCA's current Assessment District, and collected throughout the Sutter Butte Basin. A Regional Fee would be comprehensive in nature and be eligible to fund repairs, rehabilitations, and improvements including those beyond what is able to be completed solely with funding from the Assessment District and State Grants to date.

SBFCA proposes to adopt the Regional Fee within the next few months and enter into collection agreements with all member agency land use jurisdictions that have the authority to collect development impact fees. It is anticipated that SBFCA's Regional Levee Fee will be significantly less than the City's Levee Impact Fee. With SBFCA's intent to implement a Regional Levee Fee Program that applies to new development throughout the Sutter-Butte Basin, on July 6, 2021, City Council rescinded the City's Levee Impact Fee, effective immediately.

Analysis:

SBFCA's levee improvement program was prioritized for implementation based upon risk, and as such, the funding generated from the Assessment District was targeted toward funding improvements protecting the urban portion of the basin first, including Yuba City. SBFCA's work plan also contemplates funding and implementing improvements to protect the rural portion of the basin as well.

SBFCA is currently planning improvements along the Sutter Bypass east levee and a 1.6-mile project on the lower Feather River west level located between the Highway 99 bridge and the Sutter Bypass.

The intent of the Levee Impact Fee is to help pay for levee improvements, including those planned and completed by SBFCA. As such, SBFCA is requesting that the City transfer the current balance of the Levee Impact Fees to reimburse for past expenses incurred in the urban portion of the basin, thereby freeing up an equivalent amount for the rural part of the basin.

In order to satisfy the transfer request, staff has requested that SBFCA enter into a Transfer and Indemnification Agreement (Agreement) to define the terms of the transfer including certain indemnification provisions. The SBFCA Board approved the Agreement on April 8, 2020.

Staff is supportive of transferring \$1,700,000 of the funds currently being held, and retaining the remainder of \$521,600 at this time. There may be other studies required on behalf of the City in the future related to the FEMA 100-yr flood mapping process, or 200-yr urban level of flood protection. If the funds are not utilized once the FEMA mapping process is completed, staff would recommend considering transferring the remaining funds to SBFCA.

Fiscal Impact:

Transferring \$1,700,000 of Levee Impact Fees will leave the City with a balance of \$521,600 which should be sufficient to fund any future studies necessary.

Alternatives:

City Council may opt to transfer any amount up to \$2,221,610 of the City's Levee Impact Fee to SBFCA.

Recommendation:

Adopt a Resolution authorizing the Mayor to execute a Transfer and Indemnification Agreement Between the City of Yuba City and Sutter Butte Flood Control Agency (SBFCA) to transfer \$1,700,000 of Levee Impact Fees from the City to SBFCA, subject to modifications by the City Manager upon approval of the City Attorney as to legal form.

Attachments:

1. Attachment 1 - SBFCA Transfer and Indemnification Agreement

Prepared By:
Diana Langley
City Manager

Submitted By:
Diana Langley
City Manager

ATTACHMENT 1

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE MAYOR TO ENTER INTO A TRANSFER AND
INDEMNIFICATION AGREEMENT WITH SUTTER BUTTE FLOOD
CONTROL AGENCY**

WHEREAS, Sutter Butte Flood Control Agency (SBFCA) constructs, improves, and rehabilitates levees and other facilities that reduce the risk of flooding within Yuba City; and

WHEREAS, the City has established an Impact Fee to fund work to reduce the risk of flooding within Yuba City and work to achieve that goal is being performed by SBFCA; and

WHEREAS, the City desires to transfer \$1,700,000 collected through the Impact Fee to SBFCA so it may continue its work which is providing benefits to Yuba City; and,

WHEREAS, the transfer of funding from the City to SBFCA requires execution of a Transfer and Indemnification Agreement (Agreement).

NOW, THEREFORE, be it resolved by the City Council of the City of Yuba City that the Mayor is authorized to execute the Agreement with SBFCA in a form substantially in conformance with Attachment A, attached hereto, and as approved by the City Attorney.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 5th day of April 2022.

AYES:

NOES:

ABSENT:

Dave Shaw, Mayor

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

A. Transfer and Indemnification Agreement

EXHIBIT A

**TRANSFER AND INDEMNIFICATION AGREEMENT BETWEEN
THE CITY OF YUBA CITY AND SUTTER BUTTE FLOOD CONTROL
AGENCY**

THIS TRANSFER AND INDEMNIFICATION AGREEMENT (herein “Agreement”) is made and entered into this 5th day of April, 2022, by and between the CITY OF YUBA CITY, a California municipal corporation (“City”) and SUTTER BUTTE FLOOD CONTROL AGENCY, a joint powers agency and political subdivision of the State of California (“SBFCA”). City and SBFCA are sometimes hereinafter individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, SBFCA constructs, improves, and rehabilitates levees and other facilities that reduce the risk of flooding within Yuba City.

WHEREAS, the City has established an Impact Fee to fund work to reduce the risk of flooding within Yuba City and work to achieve that goal is being performed by SBFCA.

WHEREAS, the City desires to transfer funds collected through the Impact Fee to SBFCA so it may continue its work which is providing benefits to Yuba City.

WHEREAS, the transfer of funding from the City to SBFCA requires SBFCA executing this agreement with Yuba City, and the parties desire to enter into such an agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Transfer of Funds and Indemnification.

a. The City agrees to transfer \$1,700,000 of Impact Fees to SBFCA to be used by SBFCA in the performance of works which reduce flood risk within Yuba City. To the full extent permitted by law, and in consideration of the transfer of funds by the City, SBFCA agrees to defend, indemnify and hold harmless City and each of its elected and appointed officers, officials, agents, employees, consultants, attorneys, and representatives (“Indemnitees”):

i. From and against any and all actions, proceedings, claims, damages, losses, costs, penalties, fines, obligations, errors, omissions, forfeitures, and liabilities, whether actual or threatened (“Claims and Liabilities”), against Indemnitees arising from or related in any way to the collection of Impact Fees or the transfer of Impact Fees to SBFCA.

ii. From and against any Claims and Liabilities arising from or related to this Agreement.

b. The City shall promptly notify SBFCA of any such Claim and Liability, and, at the option of the City, SBFCA shall either undertake defense of the matter and pay the City's associated legal costs or advance funds to pay for defense of the matter by the City. In the event the City opts for SBFCA to undertake defense of the matter, the City will cooperate reasonably in the defense, but retains the right to settle or abandon the matter without the SBFCA's consent.

c. The provisions of this section shall survive the termination of this Agreement.

3. No Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any other association. SBFCA shall have sole control, responsibility, and oversight of the use of the Impact Fees. SBFCA shall return any Impact Fees to the City that are not used for the purpose intended under this Agreement.

4. No Approval or Waiver of Decision-making Authority. Nothing in this Agreement obligates the City or any other governmental entity, body, or advisory agency, to grant any approval of any matter described herein, nor does it restrict any such entity, body or agency from conditioning any approval of any matter described herein in any manner whatsoever. Nothing in this Agreement obligates City to pursue or defend any claim, demand or action in law or equity, nor does it otherwise limit City's authority to resolve any such claim, demand or action.

5. Waiver of Terms of Agreement. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by both Parties to this Agreement. Waiver of any one provision hereof shall not be deemed to be a waiver of any other provision hereof.

6. Modification. This Agreement may not be modified or amended except by a written instrument signed by both Parties.

7. Prevailing Party Attorneys' Fees. Should either Party institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to recovery of reasonable attorneys' fees in connection with said proceeding.

8. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of California.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

10. Severability. In the event that any part or portion of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement, which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

11. Authority. The persons executing this Agreement on behalf of the Parties warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first-above written.

CITY:

CITY OF YUBA CITY,

Dave Shaw, Mayor

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

Shannon Chaffin, Esq.
Aleshire & Wynder, LLP
City Attorney

SBFCA:

SUTTER BUTTE FLOOD CONTROL
AGENCY,

Michael Bessette, Executive Director

ATTEST:

Terra Yaney, SBFCA Clerk

APPROVED AS TO FORM:

Scott Shapiro, Esq.
SBFCA Counsel