SUBJECT: AUTHORIZATION TO APPROVE SUCCESS DAM SEISMIC REMEDIATION JOINT POWERS AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: On May 17, 2005, staff prepared a report recommending that:

1) the Mayor execute the attached Success Dam Remediation Joint Powers Agreement (JPA);
2) that the Public Works Director be appointed as the City’s representative on the Remediation Committee;
3) authorize the Mayor to release the FY 2004/2005 $6,250 installment payment; and
4) authorize the City Manager to approve future yearly payments not to exceed $7,500.

Council declined approving the joint powers agreement on May 17th because Council felt that Porterville’s share of the budget should be approved by Council and not by the committee representative as stated in the JPA agreement. The agreement states that the budget will not exceed $50,000 ($6,250 City share) in the first year (2004/2005) and will not exceed $60,000 ($7,500 City share) the following two years.

Council asked that the City Attorney introduce language in the agreement that made it clear that Council, not the committee representative, would approve the budget. Staff discussed Council’s concern with the Chairman of the Seismic Committee and were informed by the Chairman that all committee members need authorization approval from their respective governing bodies prior to the committee approving the yearly budget.

The Chairman of the Seismic Committee assured staff that the seismic committee will meet at least two months before the end of each fiscal year to discuss the next fiscal year budget. Each committee member will have plenty of time to prepare and discuss the proposed budget and receive budget approval authorization from their respective Council or Board.

To summarize once again, the key points of the JPA Success Dam Seismic Remediation Project Agreement are:

1. Agreement good for 3 years beginning 7/01/04.
2. Each agency appoints one member to the Seismic REMEDIATION Committee.
3. Meetings will be held quarterly.
4. Project budget shall be adopted on an annual basis by the Seismic Committee.
5. Porterville’s cost reimbursement is 12.5% of the adopted budget and the adopted budget shall not exceed $60,000.

6. The Lower Tule River Irrigation District (LTRID) will manage the project for the JPA.

RECOMMENDATION: That the City Council:

1. Direct the Mayor to execute the “Tule River Improvement Joint Powers Project Agreement for the Success Dam Seismic REMEDIATION Project”;

2. Appoint the Public Works Director as the City of Porterville’s representative on the Seismic REMEDIATION Committee;

3. Authorize the City Manager to release the first payment installment in the amount of $6,250 from the Water Operating Fund to the Seismic REMEDIATION Committee to cover the City’s 2004/2005 share of expenses related to the Success Dam REMEDIATION Project; and

4. Authorize the City Manager to approve future payments, not to exceed $7,500, from the Water Operating Fund to the Seismic REMEDIATION Committee for fiscal years 2005/2006 & 2006/2007.

ATTACHMENT: Project Agreement for the Success Dam Seismic REMEDIATION Project
TULE RIVER IMPROVEMENT JOINT POWERS
PROJECT AGREEMENT FOR THE
SUCCESS DAM SEISMIC REMEDIATION PROJECT

This Project Agreement is entered into this ___ day of _________________
2005 between the Lower Tule River Irrigation District (hereinafter the "LTRID"),
the Tulare County Flood Control District (hereinafter the "TCFCD"), the County of
Kings (hereinafter the "County"), the Tulare Lake Basin Water Storage District
(hereinafter the "TLBWSD") and the City of Porterville (hereinafter "Porterville"),
all hereinafter sometimes collectively referred to as the "Parties". With the
exception of LTRID, the parties to this Project Agreement are parties to the Tule
River Improvement Joint Powers Agreement ("JPA"), a joint powers agreement
entered into on February 17, 1998.

RECITALS

WHEREAS, the Tule River Improvement Joint Powers Agreement was
executed on February 17, 1998; and

WHEREAS, the LTRID is an irrigation district duly organized under the
provisions of Division 11 of the California Water Code; and

WHEREAS, the TCFCD is organized pursuant to Division 5 of the
California Water Code, and is a party to the JPA; and

WHEREAS, the County is a political subdivision of the State of California,
and a party to the JPA; and

WHEREAS, the TLBWSD is organized under the provisions of Division 14
of the California Water Code, and is a party to the JPA; and

WHEREAS, Porterville is a charter city organized under the laws of the State
of California, and a party to the JPA; and

WHEREAS, Article 3 of the JPA authorizes the Parties to exercise their
powers in common to acquire, manage, maintain, protect and enhance facilities
necessary to provide flood protection and water conservation; contract with public
agencies and private entities or parties to achieve such objectives; and to promote cooperation and preliminary planning among the Parties under agreements for implementation of specific projects, as appropriate, to improve flood protection along the Tule River and to perform all acts necessary or proper to carry out fully the purposes of the flood control objectives of Success Dam and of this Project Agreement; and,

WHEREAS, Article 8 of the JPA provides the mechanism for parties to enter into project agreements to accomplish these purposes; and

WHEREAS, during the course of implementation of the Success Reservoir Enlargement Project (hereinafter the “SREP”) it became apparent that seismic remediation measures for Success Dam were necessary to be completed prior to completion of the SREP; and

WHEREAS, it is the Parties’ desire to assist in coordinating and furthering the development and implementation of such seismic remediation measures, which measures have become known as the Success Dam Seismic Remediation Project (hereinafter the "SDSRP"), and to enter into this Project Agreement to ensure the success of both the SREP and the SDSRP.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and among the parties as follows:

1. PROJECT. The parties enter into this Project Agreement for the purposes of financing the costs for coordination, administration and meetings with the United States Army Corps of Engineers (hereinafter the “Corps”) for expediting the design and construction of the Success Dam Seismic Remediation Project and with the United States Congress in the budgeting and appropriation of funds for the Corps design and construction of the SDSRP. This local coordination effort with the Corps and the Congress for the SDSRP will hereinafter be referred to as the "Project". For the purposes of this Project Agreement, the Parties do not assume
responsibility for financial obligations for the SDSRP itself.

2. TERM. This Project Agreement shall commence on July 1, 2004 and shall continue for a term of three (3) years, terminating on June 30, 2007. The Parties may agree to extend the term of this Project Agreement subject to the provisions set forth in Paragraph 9 hereof.

3. PROJECT AGREEMENT STATUS/ADOPTION OF JPA AGREEMENT. It is the purpose of the Parties to enter this Project Agreement under the provisions of the JPA. For the purposes of this Project Agreement, the terms, conditions and provisions of the JPA, except to the extent that they may be inconsistent with the express provisions hereof, are hereby referred to and incorporated herein as though set forth herein at length, and the Parties to this Project Agreement agree to be bound thereby.

4. COMMITTEE/MEETINGS. Each of the Parties to this Project Agreement shall appoint one representative to the Project committee (hereinafter the “Seismic Committee”). The Seismic Committee shall meet at least quarterly for the dissemination of information pertaining to the Project and the SDSRP, for the evaluation of the activities and effectiveness of the Project and for determination of assessments and adoption of an annual budget for implementation of the Project.

5. PROJECT IMPLEMENTATION. Implementation and management of the Project, as developed and agreed upon by the Parties to this Project Agreement, shall be conducted by LTRID on behalf of the Parties. LTRID agrees to provide, or contract with consultants and other parties as may be required to provide, the services necessary to implement the purposes of the Project in a timely and efficient manner, subject to the limitations set forth herein and in the Project Budget. The Project Budget shall be adopted on an annual basis by the Seismic Committee under the provisions of Section 5.04 of the JPA.

6. PARTICIPATION AND COST REIMBURSEMENT. Each of the
Parties hereto agrees to be responsible for the Project costs as incurred by LTRID, pursuant to the terms of this Project Agreement, which shall be shared by the following percentages:

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>LTRID</td>
<td>60.0%</td>
</tr>
<tr>
<td>Tulare County Flood Control District</td>
<td>12.5%</td>
</tr>
<tr>
<td>County of Kings</td>
<td>2.5%</td>
</tr>
<tr>
<td>Tulare Lake Basin Water Storage District</td>
<td>12.5%</td>
</tr>
<tr>
<td>City of Porterville</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

LTRID shall conduct the Project, and each of the other Parties shall each be obligated to reimburse LTRID all costs incurred for implementing the Project as set forth hereinabove. Such reimbursement shall be made no more than 30 days after receipt of an invoice for costs incurred by LTRID.

Unless approved in advance by unanimous approval of the Seismic Committee during a Committee meeting, total expenditures by LTRID in the first year of this Project Agreement shall not exceed $50,000.00, and total expenditures by LTRID in the second and third years, and in each year thereafter for which this Project Agreement may be extended, shall not exceed $60,000.00.

7. OTHER COSTS AND EXPENSES. None of the Parties to this Project Agreement shall be responsible for reimbursement or payment of any costs or expenses which are voluntarily incurred in the furtherance of this Project Agreement which are not a part of implementation of the Project unless there is a prior written agreement by the Parties to incur such expenses.

8. LIABILITY. The parties to this Project Agreement recognize that all assets, rights, benefits, debts, liabilities, obligations and indebtedness incurred in the furtherance of this Project Agreement are and shall remain, those of the Parties to this Project Agreement and shall not become the assets, rights, benefits, debts, liabilities, obligations and indebtedness of any other party to the JPA who is not a
party to this Project Agreement.

9. AMENDMENT. This Project Agreement may be amended only by an agreement approved by all the Parties.

10. NOTICES. Notices authorized or required to be given pursuant to this Project Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the following addresses:

Lower Tule River Irrigation District
357 E. Olive Ave.
Tipton, CA 93272

Tulare County Flood Control District
5961 South Mooney Blvd.
Visalia, CA 93277

City of Porterville
Community Development and Services
291 North Main Street
P. O. Box 432
Porterville, CA 93258

County of Kings
Public Works Department
Kings County Government Center
1400 W. Lacey Blvd.
Hanford, CA 93230

Tulare Lake Basin Water Storage District
1001 Chase Ave.
Corcoran, CA 93212

11. APPLICABLE LAW AND VENUE. This Project Agreement shall be governed by the laws of the State of California, and venue of any action to enforce the provisions hereof shall be in the Superior Court of the County of Tulare.

IN WITNESS WHEREOF, the parties have caused this Project Agreement to be executed as of the date and year first above written.

Date: ________________  LOWER TULE RIVER IRRIGATION DISTRICT

BY: ______________________________
Date: ____________  

TULARE COUNTY FLOOD CONTROL DISTRICT

BY: ________________________________

ATTEST: Tulare County Administrative Officer/Clerk of the Board of Supervisors of the County of Tulare

By: ________________________________

Date: ____________  

COUNTY OF KINGS

BY: ________________________________

Approved as to form: County Counsel

By: ________________________________

Date: 3 May 05  

TULARE LAKE BASIN WATER STORAGE DISTRICT

BY: ________________________________

Date: ____________  

CITY OF PORTERVILLE

BY: ________________________________

ATTEST: City Clerk:

By: ________________________________