

BOARD OF DIRECTORS

<u>City of Stockton</u> Kimberly Warmesley Dan Wright Alt. Michael Blower	<u>Public Member</u> Steve DeBrum	<u>San Joaquin County/SJCFCWCD*</u> Paul Canepa, Vice-Chair Tom Patti Alt. Robert Rickman
<u>City of Manteca</u> Gary Singh Charlie Halford Alt. Mike Morowit	<u>Executive Director</u> Chris Elias	<u>City of Lathrop</u> Paul Akinjo, Chair Diane Lazard Alt. Jennifer Torres-O'Callaghan
*San Joaquin County Flood Control and Water Conservation District		

BOARD MEETING
San Joaquin Council of Governments
Board Council Chambers
555 E Weber Ave. Stockton, CA
THURSDAY, DECEMBER 12 2024, 10:00 A.M.

1. CALL TO ORDER

2. CLOSED SESSION

- 2.1) Conference with Legal Counsel and Recruiter regarding Public Employment pursuant to Government Code Section 54957 Title: Executive Director

REPORT OUT ON CLOSED SESSION

3. ROLL CALL

4. PLEDGE TO FLAG

5. PUBLIC COMMENTS

6. CONSENT ITEMS

- 6.1) Approve Minutes from November 21, 2024, Board Meeting
- 6.2) Approve Minutes from December 4, 2024, Board Meeting

7. NEW BUSINESS

- 7.1) Consider employment agreement for new Executive Director
- 7.2) Consider part time employment agreement for former Executive Director as a Senior Advisor to support transition activities

8. BRIEFINGS

9. ORAL REPORT FROM EXECUTIVE DIRECTOR

10. BOARD QUESTIONS, COMMENTS, ACTIONS

11. COUNSEL REPORT

12. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Board's office at (209) 299-4200. Requests must be made one full business day before the start of the meeting.

Agenda Item 6.1

MINUTES
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
BOARD MEETING OF NOVEMBER 21, 2024

STOCKTON, CALIFORNIA

1. CALL TO ORDER 9:04 AM

2. CLOSED SESSION 9:04 AM

- 2.1) Conference with Legal Counsel and Recruiter regarding Public Employment pursuant to Government Code Section 54957 Title: Executive Director

Reconvened at: **9:23AM**

REPORT OUT ON CLOSED SESSION: **9:23 AM**

- 2.1) No reportable action.

Public Comment:

- Dominick Gulli submitted written comments, and these comments were read by General Counsel for all in the meeting to hear.

3. ROLL CALL 9:24 AM

Present:

Director Akinjo
Director DeBrum
Director Halford
Director Lazard
Director Singh
Director Warmesley
Director Wright

Absent:

Director Canepa
Director Patti

4. PLEDGE TO FLAG 9:24 AM

5. PUBLIC COMMENTS 9:24 AM

Public Comment:

- Dominick Gulli submitted written comments and shared comments during the meeting for all to hear.

6. CONSENT ITEMS 9:28 AM

Approve items 6.1, 6.2, and 6.3.

6.1) Approve Minutes from November 6, 2024, Board Meeting.

6.2) Approve Minutes from September 19, 2024, Board Meeting

6.3) Authorization to Enter into a Funding Agreement with the Department of Water Resources for "Phase 5" of the Regional Flood Management Program

PUBLIC COMMENT: Dominick Gulli submitted written comments and shared comments on all Consent Items during the meeting for all to hear.

Motion: Approve Consent Items 6.1, 6.2, 6.3
Moved by: Director Singh, Seconded by Director Warmley
Vote: Motion carried 7-0
Yes: Director Akinjo, Director DeBrum, Director Halford, Director Lazard, Director Singh, Director Warmley, Director Wright
Absent: Director Canepa, Director Patti

7. NEW BUSINESS 9:30 AM

10.1) San Joaquin Area Flood Control Agency Regular Board Meeting Schedule for 2025

PUBLIC COMMENT: None

Motion: To approve the San Joaquin Area Flood Control Agency Regular Board Meeting Schedule for 2025, without a meeting in December 2025.
Moved by: Director Singh, Seconded by Director DeBrum
Vote: Motion carried 7-0
Yes: Director Akinjo, Director DeBrum, Director Halford, Director Lazard, Director Singh, Director Warmley, Director Wright
Absent: Director Canepa, Director Patti

8. BRIEFINGS 9:33 AM

8.1) Receive Status Summary on Strategic Plan Priority Actions

Public Comment:

- Dominick Gulli submitted written comments and shared comments during the meeting for all to hear.

At this time, Chair Akinjo needed to depart the meeting. The vice-chair Canepa was also absent from the meeting. Chair Akinjo elected to appoint an interim Chair and Vice-chair to lead the meeting in his absence.

Motion: To appoint Director Singh as interim Chair and Director Wright as interim Vice-Chair in Chair Akinjo's absence
Moved by: Director Wright, Seconded by Director DeBrum
Vote: Motion carried 7-0
Yes: Director Akinjo, Director DeBrum, Director Halford, Director Lazard, Director Singh, Director Warmley, Director Wright
Absent: Director Canepa, Director Patti

The meeting continued with Director Singh as interim Chair and Director Wright as interim Vice-Chair.

8.2) Receive Informational Briefing on the Status of the Climate Adaptation Policy for the Mossdale Tract Project

Public Comments:

- Dominick Gulli submitted written comments and shared comments during the meeting for all to hear.
- Artie Valencia shared comments during the meeting for all to hear.

9. ORAL REPORT FROM EXECUTIVE DIRECTOR 10:19 AM

No report.

10. BOARD QUESTIONS, COMMENTS, ACTIONS 10:20 AM

- A memento of appreciation was presented to Director Wright for his service as a member of the San Joaquin Area Flood Control Agency Board of Directors.

11. COUNSEL REPORT 10:24 AM

A Special Board Meeting needs to be held in an open public session in December to execute the contract for the new Executive Director. It was decided by the availability of the Directors to hold this meeting on December 12, 2024, at 10:00 AM.

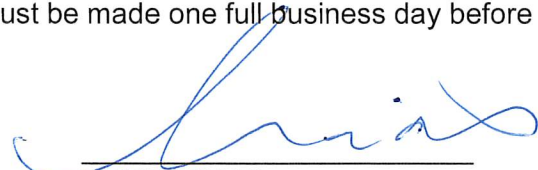
Public Comments:

- Dominick Gulli submitted written comments and shared comments during the meeting for all to hear.

12. ADJOURNMENT 10:28 AM

The meeting adjourned at 10:28 AM. The next meeting will be a Special Board Meeting to be held on December 12, 2024 at 10:00 AM.

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Board's office at (209) 299-4200. Requests must be made one full business day before the start of the meeting.



CHRIS ELIAS
EXECUTIVE DIRECTOR
SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

November 21, 2024, SJAFCA Meeting Minutes

Agenda Item 6.2

**MINUTES
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
SPECIAL BOARD MEETING OF DECEMBER 4, 2024**

STOCKTON, CALIFORNIA

1. CALL TO ORDER 10:00 AM

2. ROLL CALL 10:00 AM

Present:	Absent:
Director Canepa	Director Akinjo
Director DeBrum	Director Lazard
Director Halford	Director Warmsley
Director Patti	
Director Singh	
Director Wright	

Although Director Wright was not present for Roll Call, he arrived at 10:04 AM.

General Counsel Scott Shapiro called in from the Association of California Water Agency meeting, via cell phone.

3. PLEDGE TO FLAG 10:01 AM

4. NEW BUSINESS 10:02 AM

4.1) Amending Resolution 23-31 to add a Regular meeting

General Counsel Scott Shapiro explained the need for this Special Board Meeting. The Brown Act does not allow for a compensation package to be approved during a Special Meeting. There is not a regularly scheduled meeting in the month of December. It was discussed during the last meeting to add a regular meeting in December so that a compensation package can be approved for the new Executive Director. To do so, the Resolution that was adopted last year, needs to be amended. This action amends that Resolution to make the meeting in December a regular meeting.

PUBLIC COMMENT: Dominic Gulli submitted comments in writing and shared comments during the meeting for all to hear.

Motion: To approve amending Resolution 23-31 to add a Regular meeting
Moved by: Director Halford, Seconded by Director DeBrum
Vote: Motion carried 6-0
Yes: Director Canepa, Director DeBrum, Director Halford, Director Patti, Director Singh, Director Wright
Absent: Director Akinjo, Director Lazard, Director Warmsley

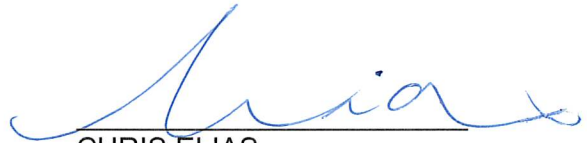
5. BOARD QUESTIONS, COMMENTS, ACTIONS 10:09 AM

- None.

6. ADJOURNMENT 10:10 AM

The meeting adjourned at 10:10 AM. The next meeting will be a Regular Board Meeting to be held on December 12, 2024 at 10:00 AM.

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Board's office at (209) 299-4200. Requests must be made one full business day before the start of the meeting.



CHRIS ELIAS
EXECUTIVE DIRECTOR
SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

December 4, 2024, SJAFCA Meeting Minutes

Agenda Item 7.1

December 12, 2024

TO: San Joaquin Area Flood Control Agency Board of Directors

FROM: Scott L. Shapiro, General Counsel

SUBJECT: **CONSIDER EMPLOYMENT AGREEMENT FOR NEW EXECUTIVE DIRECTOR**

RECOMMENDATION

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency consider executing an employment agreement with a new Executive Director for the Agency.

SUMMARY

The Agency's current Executive Director's contract had been set to expire on June 30, 2024. Mr. Elias had informed the Board of Directors that he intended to retire from full-time work but was willing to extend his contract until the end of 2024 to facilitate hiring a new Executive Director. At the Agency's February Board of Director's meeting the Agency approved an extension for Mr. Elias through 2024.

In July of 2024, the Agency's recruiter, CPS HR, posted an opening for Executive Director. Over 20 candidates applied. CPS HR, working with an ad hoc committee of the Board, narrowed the 20 candidates to eight qualified candidates, and then further narrowed the pool to three. The ad hoc committee performed Zoom interviews with the three candidates, and then recommended that all three candidates be brought to San Joaquin County to meet with the entire Board. On November 6 the Board of Directors interviewed all three candidates and gave direction to Counsel. After further inquiries and discussions between Counsel and various candidates, Counsel is now prepared to present to the Board a candidate for consideration for an employment agreement.

DISCUSSION

The Agency has been led very well by Mr. Elias for the past 6.5 years. As he has decided to retire, the Agency should retain its next Executive Director. An employment agreement has been developed and is attached here for Board review for a new Executive Director that has been selected by the Board of Directors. A term sheet that includes salary that is consistent with the Agency's posting for the position and comparable to other similar positions in the region will be presented to the Board at the December 12, 2024 meeting.

FISCAL IMPACT

This action will not have any financial impact as the Agency's budget includes adequate funds to cover this position.

Strategic Plan Consistency Analysis

The material found in this report is consistent with the Mission and Goals of the Board-adopted Strategic Plan, specifically *Goal 2 to Drive for Operational Transparency*.

RESOLUTION NO. SJAFCA-24-35
SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

**RESOLUTION APPROVING EXECUTION OF AN
EMPLOYMENT AGREEMENT FOR A NEW EXECUTIVE DIRECTOR**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

Authorize the Chair to:

1. Execute an Employment Agreement with a new Executive Director.

PASSED AND ADOPTED by the Governing Board of the San Joaquin Area Flood Control Agency on this 12th day of December, 2024, by the following votes.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Chair, San Joaquin Area Flood Control Agency

ATTEST:

Secretary, San Joaquin Area Flood Control Agency

EMPLOYMENT AGREEMENT OF _____

This Employment Agreement (“Agreement”) is effective as of January 1, 2024 by and between the San Joaquin Area Flood Control Agency, a California joint powers agency (“Employer”) and _____, an individual (“Employee”). The parties agree as follows:

AGREEMENT

1. **Employment.** Employer hereby agrees to employ Employee, and Employee hereby accepts employment with Employer as the Executive Director of Employer, upon the terms and conditions set forth in this Agreement.

2. **Duties.** Employee will devote his productive time, attention, skill, and energy exclusively to the business of Employer, and will use Employee’s best efforts to promote the success of Employer’s business. Employee will also cooperate fully with Employer in the advancement of the best interests of Employer. Employee shall perform the functions and duties specified herein.

Under the general direction of the Board of Directors, Employee is responsible for overseeing the complete operation of the Employer’s business, including finance, operations, public interaction, policy, and the successful execution of civil engineering work in connection with Employer’s flood management projects.

Key specific objectives include the following:

(a) Strategic program administration for civil works projects constructed in cooperation with Federal/State/ Local agreements: Manage projects in an effective and efficient manner. Provide strategic planning guidance regarding project scopes, schedules, financing, and execution. Prepare strategic planning documents including financing plans, program budgets, schedules, floodplain managements and reports. Identify and resolve issues as it relates to project development, design, engineering, and public outreach/coordination. Work closely with consultants to keep projects on schedule.

(b) Managing Employer-led flood protection projects: Plan and schedule work to allow projects to get to construction in a timely manner, understand the process for including environmental documents in project planning, obtain necessary permits, coordinate consultant services, develop public input as needed. Provide timely estimates of project budgets, monitor expenditures through the fiscal year, communicate cost overruns or savings. Prepare and administer consultant contracts. Manage cost sharing agreements to federal and state agencies. Manage consultants to keep projects on schedule.

(c) Representation of Employer to elected officials, Board members, other government agencies, the private sector and the public regarding Employer’s project engineering issues: Prepare and present information regarding Employer projects to a wide audience. Prepare various written reports for management, staff, and outside agencies.

Represent Employer to the media on technical issues. As needed, respond to various requests from elected officials, Board members, other government agencies, the private sector and the public.

Employee further agrees to observe and comply with Employer's policies, rules, and regulations as adopted by Employer's Board of Directors. Employee shall also perform such other legally permissible and proper duties and functions as the Board of Directors may from time to time assign.

3. **Term of Employment.** Unless terminated earlier pursuant to Sections 14 or 15 below, the term of employment shall be three (3) years and two (6) months, beginning on January 1, 2025 and ending on June 30, 2028.

4. **Place of Employment.** Employee shall perform his duties principally at Employer's offices in Stockton, California.

5. **Compensation.** Employee shall earn a starting annual salary ("Salary") of _____ thousand dollars (\$____,000). This Salary shall be subject to an annual cost of living adjustment ("COLA") in accordance with the index published by the Council for Community and Economic Research (C2ER) for San Joaquin County, but the COLA shall be capped at 3% per year; eligible for first COLA upon completion of his first six-months of employment, and then every year thereafter. Salary shall be paid on a bi-weekly basis (26 pay periods), and shall be subject to all appropriate state and federal tax withholdings and any other deductions allowed by law

6. **Benefits.** Employee shall be entitled to receive payment in lieu or participate in medical, vision, and/or dental insurance benefits offered by Employer consistent with Employer's benefit plans. Employer will contribute 7.5% of Salary into a retirement plan and Employee will be eligible to defer compensation to a deferred compensation plan, consistent with the terms of the Employer's applicable plan(s). Vesting is 100% at first contribution. Employer shall provide life and disability insurance to Employee no later than 30 days following execution of this agreement.

7. **Sick Leave.** Employee shall accrue paid sick leave at the rate of eight (8) hours for each month of completed service. Sick leave will be paid at Employee's normal base Salary. Employee will not receive pay in lieu of sick leave benefits under any circumstances, and Employee will not receive pay for unused sick leave benefits upon termination of employment. Employee may carryover up to 48 hours of paid sick leave per year.

Employee is entitled to use sick leave for the care of the employee's ill or injured immediate family member (mother, father, spouse, child, domestic partner as defined in California law) for up to half of the employee's annual sick leave accrual. Such leave for this purpose will be deducted from the employee's sick leave balance.

8. **Vacation and Holidays.** Employee shall accrue 3.6 weeks (144 hours) of vacation per year for the first five years of employment, rising to 4 weeks (160 hours) per year thereafter. Vacation shall accrue on a monthly basis. Should Employee's accrued vacation reach 240 hours, Employee will cease to accrue further vacation until Employee's

accrued vacation falls below that level. Vacation will not accrue during a leave of absence, except as required by law. Employee shall be responsible for accurately tracking his use of all vacation time in writing and reporting such use to Employer within seven (7) days of having used such time. Employer acknowledges that Employee may have pre-planned vacations for 2025 and Employee would not have accrued sufficient hours for those vacations. Therefore, for 2025 Employer grants permission for Employee to take vacations in advance of such accrued hours. All holidays observed by the City of Stockton will be provided to Employee as paid holidays.

9. **Car Allowance.** Employer shall provide to Employee a car allowance of \$_____ per month during the term of this Agreement. Because Employer is providing the car allowance, Employee shall not be permitted to drive any car provided by Employer for other employees.

10. **Cellular Phone and Data Plan Allowance.** In addition to his Salary, Employer will provide Employee with a cellular phone and data plan at Employer's expense for purposes of Employee conducting Employer business. Every two years, Employer will pay up to \$750 toward the purchase of a new cellular telephone for the Employee's use for Employer business. Such cellular telephone will remain the property of Employer and must be returned to Employer at the time of termination.

11. **Computer Equipment Allowance.** Employer shall provide a laptop and docking station for Employee's use for Employer business. These items purchased for Employer business will remain the property of the Employer and must be returned to Employer at the time of termination.

12. **Professional Dues and Travel.** Employer shall reimburse Employee for all reasonable business expenses ("Business Expenses") incurred by Employee in connection with the business of Employer, including reasonable professional dues, travel, meals, lodging, registration, costs and other related charges of Employee necessary for his participation in associations, conferences, or meetings to perform properly his duties and benefit the interests of Employer. All conference participation, including the travel and lodging associated therewith, shall be reviewed and approved by the Chair of the Board in advance and are subject to budget approval.

13. **Prior Commitments.** During his employment with Employer, Employee agrees not to have any other agreements, relationships, or commitments to any other person or entity that conflict with Employee's obligations to Employer under this Agreement. Employee will not disclose to Employer, or use, or induce Employer to use, any proprietary information or trade secrets of others. Employee represents and warrants that he has returned all property and confidential information belonging to all prior employers.

14. **Early Termination; Termination Without Cause.** Either party may terminate this Agreement at any time upon fourteen (14) days written notice to the other party. If Employer terminates this Agreement without cause after July 1, 2025, Employer shall pay Employee his Salary accrued through the date of termination, accrued but unused vacation, and any vested payments required to be paid by applicable ERISA plans.

Provided that Employee executes a Severance Agreement containing general release in favor of Employer in a form acceptable to Employer, Employer shall pay Employee as a severance, an amount equal to three (3) months' Salary, in one lump sum payment, less state and federal tax withholdings and any other deductions allowed by law. If Employee refuses to sign the standard Severance Agreement, Employee shall be deemed to have waived his right to severance.

15. **Early Termination; Termination For Cause.** Employer reserves the right to terminate this Agreement immediately without notice upon the occurrence of any of the following events:

- (a) Employee's death;
- (b) Employee's disability or incapacity, where such disability or incapacity in the sole opinion of Employer renders Employee unable to perform the essential functions of his position, with or without reasonable accommodation;
- (c) Employee's commission of acts of dishonesty, fraud, misrepresentation, embezzlement or similar conduct by Employee;
- (d) Employee's failure to reasonably perform Employee's duties as directed by the Board of Directors and as modified by Employer from time to time;
- (e) Conduct by Employee that in the good faith determination of the Board demonstrates unfitness to serve as an officer or employee of Employer, including without limitation a finding by the Board of Directors or any regulatory authority that Employee engaged in acts of harassment, violated Employers policies on ethics, workplace behavior, or legal compliance; or violated a material law or regulation applicable to the business of Employer;
- (f) Employee's refusal or neglect to comply with any lawful or reasonable order given to Employee by Employer;
- (g) any material breach of this Agreement by Employee.

Upon termination of this Agreement pursuant to this Section 15, Employer shall pay all wages due and owing through the date of termination. No other payments shall be due to Employee (except those vested payments required to be paid by applicable ERISA plans), including but not limited to severance payments.

16. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given: (1) on the date delivered by hand or sent by facsimile; (2) twenty-four (24) hours following the date sent by overnight delivery service; or (3) on the third day after mailing if deposited in the U.S. mail. Any notice to be given to the parties should be addressed as set forth on the signature page, or to such other addresses as the party may specify in writing from time to time.

17. **Arbitration.** The parties shall attempt to resolve any disputes they may have in good faith. Any disputes which cannot be resolved informally between the parties

shall be submitted to final and binding arbitration in San Joaquin County, California. A party seeking to arbitrate a dispute arising out of this Agreement must notify the other party in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within the time specified by the applicable statute of limitations for institution of legal or equitable proceedings in a court of law based on such claim. In no event shall notice be given after the date provided for in the statute of limitations. Notification to the other party of a written request for arbitration shall comply with Section 15 governing Notices. 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 Judicial Arbitration and Mediation Services, Inc. ("JAMS") in accordance with the Rules and Procedures relating to employment disputes, which may be found at https://www.jamsadr.com/files/Uploads/Documents/JAMS-rules/JAMS_employment_arbitration_rules-2014.pdf, excepting such Rules as may be in conflict with federal or California law. Within ten (10) business days after notice of a dispute subject to arbitration is given, the parties shall select an arbitrator. If the parties fail to select an arbitrator within the designated period, then on the request of either party, JAMS shall select the arbitrator. Employer shall pay the arbitrator's fees and expenses unless applicable law allows the parties to share the arbitrator's fees and expenses, in which event the Employer and Employee shall each pay 50% of the arbitrator's fees and expenses. In the event that either party seeks injunctive relief, consistent with this arbitration clause such relief shall be sought pursuant to California Code of Civil Procedure sections 1281.8 and 527, or any successor statutes. 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 or as otherwise may be required by law.

The parties expressly intend to arbitrate disputes between them. Therefore, this arbitration clause shall be construed so as to be consistent with applicable federal and California law, and to be enforceable to the maximum extent allowable by law. If necessary, any portion of this clause that is unenforceable by law shall be stricken, and the arbitrator or the court, as the case may be, shall have the power to reform this clause to the extent necessary to comply with applicable law and to give effect to the parties' intent that they shall arbitrate their disputes.

18. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, whether oral or in writing. This Agreement may not be amended except by the mutual written consent of the parties.

19. **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. 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.

20. **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.

21. **Binding Effect; Assignments.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their permitted successors and assigns. Employee

may not assign this Agreement or assign or delegate any of Employee's rights or duties hereunder without the prior written consent of the Employer.

22. **Legal Representation.** Employee acknowledges and understands that the law firm of Downey Brand LLP, and its attorneys, only represents Employer and does not represent Employee. Employee further acknowledges that he has had ample and sufficient opportunity to seek and obtain advice from independent counsel and is not relying on Downey Brand LLP to represent Employee's individual interests.

22. **Indemnification.** Employer shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of employment, in conformance with California law (Government Code section 995 et seq.).

23. **WAIVER OF TRIAL BY JUDGE OR JURY. EMPLOYEE AND EMPLOYER AGREE THAT BY ENTERING THIS AGREEMENT, THEY ARE KNOWINGLY AND VOLUNTARILY WAIVING THEIR RIGHT TO A TRIAL BY A JUDGE OR JURY.**

24. **Attorneys' Fees and Costs.** In the event of litigation, arbitration or any other action or proceeding between the parties to interpret or enforce this Agreement or any part thereof or otherwise arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its costs related to any such action or proceeding and its reasonable fees of attorneys, accountants and expert witnesses incurred by such party in connection with any such action or proceeding. The prevailing party shall be deemed to be the party which obtains substantially the relief sought by final resolution, compromise or settlement, or as may otherwise be determined by order of a court of competent jurisdiction in the event of litigation, an award or decision of one or more arbitrators in the event of arbitration, or a decision of a comparable official in the event of any other action or proceeding.

25. **Governing Law.** The laws of the State of California shall govern this Agreement.

EMPLOYER:

SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

EMPLOYEE:

By: _____

Paul Akinjo
2024 Board Chair

Agenda Item 7.2

December 12, 2024

TO: San Joaquin Area Flood Control Agency Board of Directors

FROM: Scott L. Shapiro, General Counsel

SUBJECT: **CONSIDER PART TIME EMPLOYMENT AGREEMENT FOR FORMER EXECUTIVE DIRECTOR AS A SENIOR ADVISOR TO SUPPORT TRANSITION ISSUES.**

RECOMMENDATION

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency consider executing a part time employment agreement with Mr. Elias.

SUMMARY

The Agency's employment agreement with Mr. Elias (the Agency's current Executive Director) had been set to expire on June 30, 2024. Mr. Elias had informed the Board of Directors that he intended to retire from full-time work but was willing to extend his contract until the end of 2024 to facilitate hiring a new Executive Director. At the Agency's February Board of Director's meeting the Agency approved an extension for Mr. Elias through 2024.

In July of 2024, the Agency's recruiter, CPS HR, posted an opening for Executive Director. On November 6 the Board of Directors interviewed candidates and gave direction to Counsel. After further inquiries and discussions between Counsel and various candidates, Counsel will present to the Board a candidate for consideration for an employment agreement on December 12, 2024.

DISCUSSION

The Agency has been led very well by Mr. Elias for the past 6.5 years. Mr. Elias has expressed a willingness to be available to the Agency going forward to assist with transitions and for discrete projects. Such an offer is likely to be helpful to the new Executive Director and therefore would likely be supported by the Board of Directors. Counsel therefore presents the attached Part Time Employment Agreement to the Board for consideration.

FISCAL IMPACT

This action will not have any financial impact as the Agency's budget includes adequate funds to cover this position.

Strategic Plan Consistency Analysis

The material found in this report is consistent with the Mission and Goals of the Board-adopted Strategic Plan, specifically *Goal 2 to Drive for Operational Transparency*.

RESOLUTION NO. SJAFCA-24-36
SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

**RESOLUTION APPROVING EXECUTION OF A PART TIME
EMPLOYMENT AGREEMENT FOR CHRIS ELIAS**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN AREA
FLOOD CONTROL AGENCY, AS FOLLOWS:

Authorize the Chair to:

1. Execute a Part Time Employment Agreement with Chris Elias.

PASSED AND ADOPTED by the Governing Board of the San Joaquin Area Flood
Control Agency on this 12th day of December, 2024, by the following votes.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Chair, San Joaquin Area Flood Control Agency

ATTEST:

Secretary, San Joaquin Area Flood Control
Agency

PART TIME EMPLOYMENT AGREEMENT OF CHRIS ELIAS

This Amended and Restated Employment Agreement (“Agreement”) is entered into effective as of January 1, 2025 by and between the San Joaquin Area Flood Control Agency, a California joint powers agency (“Employer”) and Chris Elias, an individual (“Employee”). This Agreement amends and restates (i) the Employment Agreement of May 29, 2018; (ii) the Amended and Restated Employment Agreement of June 17, 2021; and (iii) the Amended and Restated Employment Agreement of February 15, 2024. The parties agree as follows:

AGREEMENT

1. **Employment.** Employer hereby agrees to continue the employment of Employee, with the change that Employee will move from salaried to hourly, and Employee hereby accepts continued employment with Employer pursuant to the terms and conditions set forth in this Agreement.

2. **Duties.** Employee will devote his productive time, attention, skill, and energy to the business of Employer, and will use Employee’s best efforts to promote the success of Employer’s business. Under the general direction of the Agency’s Executive Director, Employee will act as a Senior Advisor to the Employer helping with the transition of the Executive Director position and working on discrete assignments as assigned by the Executive Director.

3. **Employee Performance Evaluation.** Regular communication about mutual expectations and about the Employee’s performance is essential to a strong working relationship. Employer and Employee have conducted annual evaluations since the time of Employee’s hiring, but no further formal evaluations will be required under this Agreement.

4. **Term of Employment.** Unless terminated earlier pursuant to Sections 16 or 17 below, the term of this amended and restated employment shall be through December 31, 2025.

5. **Place of Employment.** Employee shall perform his duties principally at Employer’s offices in Stockton, California.

6. **Compensation and Hours.** Employee shall earn hourly compensation at the rate of \$135 per hour. This hourly rate will not be adjusted absent an amendment to this Agreement. Except as may be specifically provided otherwise in this Agreement, the terms of Employee’s employment shall be controlled by Employer’s Employee Manual. Employee shall keep his time on Employer-approved timesheets which shall be submitted to the Employer consistent with its Employee Manual and its normal practice. Employee shall work no more than 20 hours per week.

7. **Benefits.** Employee shall not be entitled to receive or participate in any medical, vision, and/or dental insurance benefits offered by Employer at any time during the term of this Agreement. Employer will not contribute any funds into a plan for Employee's benefit during the term of employment.

8. **Sick Leave.** Employee shall accrue paid sick leave at the rate of four (4) hours for each month of completed service. Sick leave will be paid at Employee's normal base Salary. Employee will not receive pay in lieu of sick leave benefits under any circumstances, and Employee will not receive pay for unused sick leave benefits upon termination of employment. Employee may carryover up to 48 hours of paid sick leave per year. Employee is entitled to use sick leave for the care of the employee's ill or injured immediate family member (mother, father, spouse, child, domestic partner as defined in California law) for up to half of the employee's annual sick leave accrual. Such leave for this purpose will be deducted from the employee's sick leave balance.

9. **Vacation.** Employee shall accrue two weeks (80 hours) of vacation per year and this vacation shall be apportioned for any partial year worked. Vacation shall accrue on a monthly basis. Should Employee's accrued vacation reach 240 hours, Employee will cease to accrue further vacation until Employee's accrued vacation falls below that level. Vacation will not accrue during a leave of absence, except as required by law. Employee shall be responsible for accurately tracking his use of all vacation time in writing and reporting such use to Employer within seven (7) days of having used such time.

10. **Bereavement/Funeral Leave.** Employer shall provide 24 hours maximum paid leave in the event of death in employee's immediate family: spouse, children of Employee, brother, sister, grandchild, grandparent, father-in-law, mother-in-law, and registered domestic partner.

11. **Holidays.** All holidays observed by the City of Stockton will be provided to Employee as paid holidays.

12. **Cellular Phone and Data Plan Allowance.** Employer will continue to provide Employee with a cellular phone and data plan at Employer's expense for purposes of Employee conducting Employer business. Employee will be permitted to use the existing cellular telephone for the Employee's use for Employer business. Such cellular telephone will remain the property of Employer and must be returned to Employer at the time of termination.

13. **Computer Equipment Allowance.** Employee may continue to use the laptop and docking station previously purchased for Employer business. These items purchased for Employer business will remain the property of the Employer and must be returned to Employer at the time of termination.

14. **Professional Dues and Travel.** Employer shall reimburse Employee for all reasonable business expenses ("Business Expenses") incurred by Employee in connection with the business of Employer, including reasonable professional dues, travel, meals, lodging, registration, costs and other related charges of Employee necessary for his

participation in associations, conferences, or meetings to perform properly his duties and benefit the interests of Employer. All conference participation, including the travel and lodging associated therewith, shall be reviewed and approved by the Executive Director and are subject to budget availability and/or approval..

15. **Prior Commitments.** During his employment with Employer, Employee agrees not to have any other agreements, relationships, or commitments to any other person or entity that conflict with Employee's obligations to Employer under this Agreement. Employee will not disclose to Employer, or use, or induce Employer to use, any proprietary information or trade secrets of others. Employee represents and warrants that he has returned all property and confidential information belonging to all prior employers.

16. **Early Termination; Termination Without Cause.** Either party may terminate this Agreement at any time upon fourteen (14) days written notice to the other party. While this Agreement was approved by the Board of Directors, early termination under this provision shall occur, if at all, at the decision of the Executive Director.

17. **Early Termination; Termination For Cause.** Employer reserves the right to terminate this Agreement immediately without notice upon the occurrence of any of the following events:

- (a) Employee's death;
- (b) Employee's disability or incapacity, where such disability or incapacity in the sole opinion of Employer renders Employee unable to perform the essential functions of his position, with or without reasonable accommodation;
- (c) Employee's commission of acts of dishonesty, fraud, misrepresentation, embezzlement or similar conduct by Employee;
- (d) Employee's failure to reasonably perform Employee's duties as modified by Employer from time to time;
- (e) Conduct by Employee that in the good faith determination of the Board demonstrates unfitness to serve as an officer or employee of Employer, including without limitation a finding by the Board of Directors or any regulatory authority that Employee engaged in acts of harassment, violated Employers policies on ethics, workplace behavior, or legal compliance; or violated a material law or regulation applicable to the business of Employer;
- (f) Employee's refusal or neglect to comply with any lawful or reasonable order given to Employee by Employer;
- (g) Any material breach of this Agreement by Employee.

Upon termination of this Agreement pursuant to this Section 17, Employer shall pay all wages due and owing through the date of termination. No other payments shall be due to Employee (except those vested payments required to be paid by applicable ERISA plans),

including but not limited to severance payments. Nothing in this Agreement shall be construed to require a waiver of rights that Employee may have under the Family and Medical Leave Act, California Family Rights Act or other similar federal and/or state laws.

18. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given: (1) on the date delivered by hand or sent by facsimile; (2) twenty-four (24) hours following the date sent by overnight delivery service; or (3) on the third day after mailing if deposited in the U.S. mail. Any notice to be given to the parties should be addressed as set forth on the signature page, or to such other addresses as the party may specify in writing from time to time.

19. **Arbitration.** The parties shall attempt to resolve any disputes they may have in good faith. Any disputes which cannot be resolved informally between the parties shall be submitted to final and binding arbitration in San Joaquin County, California. A party seeking to arbitrate a dispute arising out of this Agreement must notify the other party in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within the time specified by the applicable statute of limitations for institution of legal or equitable proceedings in a court of law based on such claim. In no event shall notice be given after the date provided for in the statute of limitations. Notification to the other party of a written request for arbitration shall comply with Section 18 governing Notices. 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 Judicial Arbitration and Mediation Services, Inc. ("JAMS") in accordance with the Rules and Procedures relating to employment disputes, which may be found at https://www.jamsadr.com/files/Uploads/Documents/JAMS-rules/JAMS_employment_arbitration_rules-2014.pdf, excepting such Rules as may be in conflict with federal or California law. Within ten (10) business days after notice of a dispute subject to arbitration is given, the parties shall select an arbitrator. If the parties fail to select an arbitrator within the designated period, then on the request of either party, JAMS shall select the arbitrator. Employer shall pay the arbitrator's fees and expenses unless applicable law allows the parties to share the arbitrator's fees and expenses, in which event the Employer and Employee shall each pay 50% of the arbitrator's fees and expenses. In the event that either party seeks injunctive relief, consistent with this arbitration clause such relief shall be sought pursuant to California Code of Civil Procedure sections 1281.8 and 527, or any successor statutes. 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 or as otherwise may be required by law.

The parties expressly intend to arbitrate disputes between them. Therefore, this arbitration clause shall be construed so as to be consistent with applicable federal and California law, and to be enforceable to the maximum extent allowable by law. If necessary, any portion of this clause that is unenforceable by law shall be stricken, and the arbitrator or the court, as the case may be, shall have the power to reform this clause to the extent necessary to comply with applicable law and to give effect to the parties' intent that they shall arbitrate their disputes.

20. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, whether oral or in writing. This Agreement may not be amended except by the mutual written consent of the parties.

21. **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. 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.

22. **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.

23. **Binding Effect; Assignments.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their permitted successors and assigns. Employee may not assign this Agreement or assign or delegate any of Employee's rights or duties hereunder without the prior written consent of the Employer.

24. **Legal Representation.** Employee acknowledges and understands that the law firm of Downey Brand LLP, and its attorneys, only represents Employer and does not represent Employee. Employee further acknowledges that he has had ample and sufficient opportunity to seek and obtain advice from independent counsel and is not relying on Downey Brand LLP to represent Employee's individual interests.

22. **Indemnification.** Employer shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of employment, in conformance with California law (Government Code section 995 et seq.).

23. **WAIVER OF TRIAL BY JUDGE OR JURY. EMPLOYEE AND EMPLOYER AGREE THAT BY ENTERING THIS AGREEMENT, THEY ARE KNOWINGLY AND VOLUNTARILY WAIVING THEIR RIGHT TO A TRIAL BY A JUDGE OR JURY.**

24. **Attorneys' Fees and Costs.** In the event of litigation, arbitration or any other action or proceeding between the parties to interpret or enforce this Agreement or any part thereof or otherwise arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its costs related to any such action or proceeding and its reasonable fees of attorneys, accountants and expert witnesses incurred by such party in connection with any such action or proceeding. The prevailing party shall be deemed to be the party which obtains substantially the relief sought by final resolution, compromise or settlement, or as may otherwise be determined by order of a court of competent jurisdiction in the event of litigation, an award or decision of one or more arbitrators in the event of arbitration, or a decision of a comparable official in the event of any other action or proceeding.

25. Governing Law. The laws of the State of California shall govern this Agreement.

EMPLOYER:

SAN JOAQUIN AREA FLOOD CONTROL AGENCY

EMPLOYEE:

CHRIS ELIAS

By:

Paul Akinjo
Board Chair

Chris Elias

**End of
Agenda Packet**