

Meeting Date: 4/23/2015

Report Type: Consent

Report ID: 2015-00406

Title: Termination of Agreements with the Sacramento Area Flood Control Agency (SAFCA)

Location: Citywide

Recommendation: Pass a Resolution 1) authorizing the City Manager to execute the Termination Agreement terminating the Sacramento Area Flood Control Agency 1989 interagency agreement; 2) authorizing the City Manager to execute the Termination Agreement terminating the Sacramento Area Flood Control Agency 2009 personnel services agreement; and 3) authorizing the City Manager to execute the California Public Employees' Retirement System (CalPERS) Reallocation Agreement.

Contact: Geri Hamby, Director, (916) 808-7173; Denise Deprato, Support Services Manager, (916) 808-8249, Department of Human Resources

Presenter: None

Department: Human Resources

Division: HR Administration

Dept ID: 08001011

Attachments:

- 1-Description/Analysis
- 2-Attachment 1 (City SAFCA 1989)
- 3-Attachment2 (2009 Agreement)
- 4-Resolution
- 5-Exhibit A (Termination Agreement 2009 Agreement)
- 6-Exhibit B (Reallocation Agreement)

City Attorney Review

Approved as to Form
Brett Witter
4/15/2015 4:45:22 PM

Approvals/Acknowledgements

Department Director or Designee: Geri Hamby - 4/15/2015 11:46:31 AM

Description/Analysis

Issue Detail: The Sacramento Area Flood Control Agency (SAFCA) was created in 1989 as a Joint Exercise of Powers Agency (JPA) to provide local support for a comprehensive plan of flood control improvements for the Sacramento area. At the time, SAFCA's responsibility was expected to be limited to supporting authorization of the plan by Congress and the State Legislature and creating a financing mechanism to fund the local share of the cost of the plan. This effort was envisioned to last less than five years, with the long-term administration of the financing mechanism to be handled by the County of Sacramento. In line with these expectations, SAFCA's initial staff of three managers and a clerk was originally made up of three City of Sacramento employees and one County of Sacramento employee on loan to the JPA, subsequently augmented with City and County positions as the Agency grew.

The Agency has maintained a small workforce, currently consisting of seven managers and six support staff. All of SAFCA's personnel services have continued to be administered through agreements with the City or County. SAFCA employees participate in the City's or County's health, welfare and retirement benefits programs. In 2009, all but two of SAFCA's positions were consolidated under the City system using a combination of existing City position classifications as well as new SAFCA-specific position classifications. The SAFCA positions administered by the City were created by the City Council and approved by the SAFCA Board under an interagency personnel services agreement in which SAFCA pays the City an overhead fee for administering the positions.

As discussed above, SAFCA has historically relied on the City and County to provide the Agency with its staff and to administer the salaries, benefits, and services available to these employees. The agreements under which these services have been provided are the 1989 Interagency Agreement between SAFCA, the City, the County, the County Water Agency and the Housing Authority of the City (Attachment 1); and the 2009 Personnel Services Agreement between SAFCA and the City (Attachment 2). In order to create a self-administered personnel system, these agreements must be terminated. The Agreements resulting in the termination of the Personnel Services Agreement (Exhibit A) and the Interagency Agreement also include additional terms such as requiring SAFCA to indemnify the City from any future and unknown liabilities which may arise as a result of the creation of SAFCA's self-administered personnel system.

The City, SAFCA, and CalPERS will enter into the Reallocation Agreement (Exhibit B) as a necessary element of establishing SAFCA as a CalPERS member agency, and which results in the CalPERS reallocating the the assets and liabilities of the SAFCA employees retirement accounts from the City's contract to SAFCA's contract.

Policy Considerations: SAFCA's transition to a self-administered personnel management system will: (1) resolve the conflict between the SAFCA JPA and the current personnel management system, (2) address administrative concerns which are impacting both the City's and SAFCA's efficient operations, (3) address concerns raised by CalPERS regarding the semi-autonomous nature of the current system; and (4) resolve potential conflicts with the Internal Revenue Code for SAFCA, the City, and the County.

Economic Impacts: None

Environmental Considerations: None

Sustainability: None

Commission/Committee Action: None

Rationale for Recommendation: In 2009, all but two of SAFCA's positions were consolidated under the City system using a combination of existing City position classifications as well as new SAFCA-specific position classifications. The SAFCA positions administered by the City were created by the City Council and approved by the SAFCA Board under an interagency personnel services agreement in which SAFCA pays the City an overhead fee for administering the positions.

While these administrative arrangements have worked reasonably well, several factors now necessitate a transition to SAFCA's administration of its own personnel system. Under the current system, the City Council, the County Board of Supervisors, and the SAFCA Board all have various responsibilities for SAFCA's personnel. Each of these entities faces unique financial, strategic, and policy challenges. However, SAFCA's Joint Exercise of Powers Agreement vests all personnel decisions with the SAFCA Board of Directors and Executive Director. Because of the potential conflicts created by this arrangement, in 2012 the City asked SAFCA to explore the feasibility of a self-administered personnel system. Concerns raised by CalPERS about the current arrangement have reinforced the need for SAFCA to move toward a more autonomous personnel management system.

Financial Considerations: None

Local Business Enterprise (LBE): Not Applicable

SACRAMENTO AREA FLOOD CONTROL AGENCY
JOINT EXERCISE OF POWERS AGREEMENT

This Agreement is made and entered into as of the 26th day of September 1989, by and between the following parties:

- a. City of Sacramento, hereinafter referred to as the "City";
- b. County of Sacramento, hereinafter referred to as the "County";
- c. Reclamation District 1000, hereinafter referred to as "RD 1000";
- d. American River Flood Control District, hereinafter referred to as "ARFCD";
- e. County of Sutter, hereinafter referred to as "Sutter";
- f. Sacramento County Water Agency, hereinafter referred to as "Water Agency";
- g. Sutter County Water Agency, hereinafter referred to as "Sutter Water Agency."

RECITALS

The Parties to this Agreement have and possess the power and authorization to acquire, construct, operate and maintain Works for the purpose of controlling and conserving waters for the protection of life and property that would or could be damaged by being inundated by still or flowing water.

However, there is a need for coordinated planning for the control of waters within or flowing into the boundaries of the

Parties and for the protection of private and public property within said boundaries.

There is a need for a coordinated and regional effort to finance, provide, and maintain Facilities and Works necessary to ensure not less than the minimum level of flood protection, as defined by the Federal Emergency Management Agency, in developed and urbanizing areas which are designated for residential, commercial, or industrial uses within the boundaries of the Parties.

There is a need to provide local assurances and participate in cost sharing for such projects as the levee reconstruction work as required by the Sacramento Urban Area Levee Reconstruction Project which was determined by the Assistant Secretary of the Army (Civil Works) to fall within the purview of the Sacramento River Flood Control Project, and for other Projects, Facilities or Works necessary for the achievement of interim 100 and at least a 200-year flood protection, as well as for the resolution of Water Control problems.

Such a regional Water Control plan can best be achieved through the cooperative action of the Parties operating through a Joint Exercise of Powers Agency.

Each of the Parties is authorized to contract with each other for the joint exercise of any common power under Article I, Chapter 5, Division 7, Title 1 of the Government Code.

COVENANTS

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

PURPOSE AND POWERS

1. Definitions. For the purpose of this Agreement, the meaning of the terms hereinafter set forth shall be the following:
 - a. "Agreement" means this Joint Exercise of Powers Agreement.
 - b. "Agency" means the "Sacramento Area Flood Control Agency" formed pursuant to this Agreement.
 - c. "Board" or "Board of Directors" means the governing body of the Agency as established in Section 9 of this Agreement.
 - d. "Director" or "Directors" means the director representing a Party to the Agency.
 - e. "Party" or "Parties" means each of the parties that become a signatory to this Agreement, accepting the rights and obligations of the Agency hereunder, including any public entity executing an addendum of the original Agreement as hereinafter provided. The County and the Water Agency shall, for all purposes herein, constitute a single Party. Sutter and the Sutter Water Agency shall, for all purposes herein, constitute a single Party.
 - f. "Project" means any Facilities or Works constructed by the Agency.

g. "Fiscal Year" means July 1, to and including the following June 30.

h. "Facility" or "Facilities" means any Works financed, acquired or constructed by the Agency.

i. "Budget" means the approved budget applicable to the expenses of the Agency.

j. "Work" or "Works" means dams, watercourses, drainage channels, conduits, ditches, canals, pumping plants, levees, buildings, and other structures utilized for the control and disposal of waters within the boundaries of the Parties or for the control and disposal of waters outside and running into the boundaries of the Agency and for which said Facilities and improvements are required either for the protection of the property therein or for the purpose of conserving any waters for beneficial use within the boundaries of the Agency.

k. "Water Control" means regulating still or moving surface and/or stream water that, if left unchecked, would inundate private or public property.

l. "Special District" means a city, county, irrigation district, reclamation district, drainage district or any other district or public entity which is not a Party of the Agency and which has authority to construct, operate and maintain Water Control Works.

2. Agency Created. There is hereby created a public entity to be known as the "Sacramento Area Flood Control Agency". The Agency is formed by this Agreement pursuant to the provisions of

Article I, Chapter 5, Division 7, Title 1 of the Government Code of the State of California. The Agency shall be a public entity separate from the Parties hereto.

3. Boundaries of the Agency. (a) The geographic boundaries of the Agency shall be coextensive with those of 1) the City; 2) the County, excepting that portion lying within the exterior boundaries of the incorporated cities of Folsom, Galt and Isleton; 3) RD 1000; 4) ARFCD; and 5) that portion of Sutter beginning at the Sutter/Sacramento County boundary on the Sacramento River and continuing northerly along the Sacramento River to center line of the Natomas Cross Canal; thence north easterly along the center line of the Cross Canal to the center line of the Pleasant Grove Creek canal; thence northerly along the center line of the East Side canal to the north line of Township Eleven North; thence due easterly to the Sutter/Placer County boundary; thence southerly along the Sutter/Placer County boundary to the Sacramento County boundary; thence westerly along the Sutter/Sacramento County boundary to the Sacramento River and the point of beginning. A map of the Agency's geographic boundaries is attached hereto as Exhibit A.

(b) Notwithstanding any provision in this Agreement to the contrary, by an affirmative vote of the majority of the Sutter County Board of Supervisors for the purpose of establishing a joint exercise of powers agreement between the Counties of Sutter and Placer, having as one of its powers and purposes the provision of Water Control, that portion of Sutter County,

beginning at the intersection of the center line of the Natomas East Main Canal with the Sutter/Sacramento County line; thence northwesterly along the center line of the Natomas East Main Drain Canal and the Pleasant Grove Creek Canal to the center line of the Cross Canal; thence northerly along the center line of the East Side Canal to the north line of Township Eleven North; thence easterly along the north line of Township Eleven North to the Sutter/Placer County line; then southerly along the Sutter/Placer County line to the Sutter/Sacramento County line; thence westerly along the Sutter/Sacramento County line to the point of beginning, may be removed from the geographic boundaries of this Agreement, effective as of the date that such area is included in such a joint exercise of powers agreement.

(c) In the event that the geographic area of Sutter County identified in Section 3(b) of this Agreement withdraws from the Agency, pursuant to the terms of this Agreement, said withdrawal shall be subject to the terms and conditions contained in Paragraphs 39(b) and 39(c) of this Agreement, and the land shall remain subject to the lien of any assessment levied pursuant to this Agreement prior to the effective date of said withdrawal.

4. Purpose of the Agreement; Common Power To Be Exercised. Each Party has in common the power to study, plan for, develop, finance, acquire, construct, maintain, repair, manage, operate and control Water Control Works and Facilities for the protection of the public either alone or in cooperation with the United States, the State of California, or other entities. The purpose

of this Agreement is to jointly exercise the foregoing common powers in the manner hereinafter set forth.

5. Existing Water Control Works. Notwithstanding anything to the contrary, the Agency shall not undertake the acquisition, operation or maintenance of any existing Water Control Works or Facilities within any Party's boundaries and shall not perform any Water Control functions currently performed by or within the powers of a Party within such Party's boundaries, absent written consent of the Party's governing body.

6. Powers. The Agency shall have the power in its own name to do any of the following:

a. To exercise jointly the common powers of its Parties in studying, planning and implementing ways and means to provide a reasonable program and plan of operation for the control of waters within or flowing into the boundaries of the Parties.

b. To make and enter contracts necessary to the full exercise of its powers.

c. To contract for the services of engineers, attorneys, planners, financial consultants, and separate and apart therefrom, to employ such other persons as it deems necessary.

d. To acquire, construct, manage, maintain, operate and replace any Facilities, or Works; provided, however, that the Agency shall not construct, maintain or operate any Water Control

Works or Facilities within the boundaries of a Special District absent the prior written consent of the Special District's governing body.

e. To enter into agreements with the United States of America or the State of California to provide a portion of the local contribution which may be required for any Facilities or Works constructed by the state or federal governments.

f. To acquire, by eminent domain or otherwise, and to hold and dispose of property necessary to the full exercise of its powers.

g. To incur debts, liabilities or obligations subject to limitations herein set forth.

h. To levy special benefits assessments and to issue revenue bonds as hereinafter provided.

i. To sue and be sued in its own name.

j. To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, or of the State of California necessary for the Agency's full exercise of its powers.

k. To perform all acts necessary or proper to carry out fully the purpose of this Agreement.

l. To the extent not herein specifically provided for, to exercise any powers in the manner and according to methods provided under the laws applicable to the County.

ORGANIZATION

7. Membership. The Parties of the Agency shall be each public entity which has executed, or hereafter shall execute, this Agreement, or any addenda, amendment or supplement thereto and which has not, pursuant to the provisions hereof, withdrawn therefrom.

8. Names. The names, particular capacities, and addresses of the initial Directors are shown on Exhibit B. Exhibit B shall be amended or supplemented from time to time to reflect the then current Directors. A change in Exhibit B shall not be deemed an amendment to this Agreement.

9. Governing Body of the Agency. (a) The business of the Agency shall be conducted by a Board of Directors consisting of thirteen (13) persons. The Board shall be comprised as follows: 5 board members from the Sacramento County Board of Supervisors, 3 council members from the City Council, 2 trustees from the American River Flood Control District, 2 trustees from Reclamation District 1000, and 1 board member from the Sutter County Board of Supervisors.

(b) An alternate for each Director shall be appointed or selected by the governing body of the respective Party. The names of all alternates shall be on file with the Board. The alternates shall assume all rights of the Director representing the appointing Party and shall have the authority to act in the absence of a Director or in the event that a Director has a conflict of interest which precludes participation by the Director in any decisionmaking process of the Agency.

(c) Each Director and alternate shall hold office from the first meeting of the Board after his appointment by the governing body he represents until his successor is selected.

(d) A Director may receive such compensation from the Agency for his services as may from time to time be established by the Board. A Director may be reimbursed for expenses incurred by such Director in the conduct of the Agency's business.

10. Principal Office. The principal office of the Agency shall be established by the Board. The Board is hereby granted full power and authority to change said principal office from one location to another in the boundaries of the Agency. Any change shall be noted by the secretary under this section, but shall not be considered an amendment to this Agreement.

11. Meetings. The Board shall meet at the Agency's principal office or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board; a copy of such resolution shall be furnished to each Party hereto. Regular, adjourned and special meetings shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (commencing at Section 54950).

12. Quorum. A simple majority of the Directors with at least four-fifths (4/5) of the Parties represented by at least one Director each shall constitute a quorum for the purposes of transacting the Agency's general business. Except as otherwise

provided, the vote of a majority of all the Directors (currently 7) shall be required for the Agency to take action.

13. Powers and Limitations Thereon. All the power and authority of the Agency will be exercised by the Board, subject however, to the rights reserved by the Parties as herein set forth.

14. Minutes. The secretary of the Agency shall cause to be kept minutes of regular, adjourned and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director and to each of the Parties hereto.

15. Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

16. Vote or Assent of Parties. The vote, assent, or approval of Parties in any matter requiring such vote, assent or approval hereunder, shall be evidenced by a certified copy of the resolution of the governing board of such Party filed with the Agency.

17. Officers. There shall be selected from the membership of the Board, a chairman and a vice chairman. The Board shall appoint a secretary who may also be a director; the secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Agency. The Treasurer of the County shall be the treasurer of the Agency, and shall be the depositary and shall have custody of all money of the Agency, from whatever source. The treasurer shall perform

the duties specified in Government Code Section 6506.5. The Auditor of the County shall be the auditor of the Agency and shall draw all warrants and pay demands against the Agency approved by the Board. In addition, the Board shall have the power to appoint such additional officers as it deems necessary.

The treasurer and auditor hereby designated may be changed only by the consent of all Directors. The chairman, vice chairman, and secretary shall hold office for a period of one year commencing July 1 of each and every fiscal year; provided

however, that the first chairman, vice chairman and secretary appointed shall hold office from the date of their appointment to June 30 of the ensuing fiscal year. The public officer or officers or persons who have charge of any funds or securities of the Agency shall be bonded and the amount of their bond shall be designated in the applicable budget and thus fixed.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Parties or by reason of their employment by the Board to be subject to any of the requirements of such Parties.

18. Executive Director. The Executive Director of the Agency shall be the chief administrative officer of the Agency, shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Agency as is or hereafter may be placed in his charge, or under his jurisdiction or control, pursuant to the provision of this Agreement, or of any ordinance, resolution or order of the Board. In addition to other powers and duties herein provided, the Executive Director shall have the power:

(a) Under policy direction of the Board, to plan, organize and direct all regional water control activities.

(b) To appoint and to remove all Agency employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement.

(c) To authorize expenditures within the designations and limitations of the approved Budget.

(d) To make recommendations to and requests of the Board concerning all of the matters and things which are to be performed, done or carried out by said Board. The Executive Director may be removed by majority vote (7) for cause or two-thirds vote (9) without cause by the Directors voting in favor of such removal.

VETO POWER

19. A Party may exercise a veto with respect to the following items: a) the construction and/or acquisition of Works or Facilities within its boundaries; b) the Agency's assumption of the Party's maintenance and operation responsibilities for currently existing levees, Facilities or Works; c) the imposition of any assessment, fee, or charge within its boundaries to be levied for any Projects, Facilities or Works authorized pursuant to this Agreement; and d) the construction and/or acquisition of a new cross levee within the boundaries of RD 1000 to an elevation equal to or exceeding the elevation of existing RD 1000 perimeter levees and connecting to such perimeter levees.

20. In order for a Party to exercise its veto, the majority of the Party's governing board must authorize or ratify, by resolution, the exercise of that veto by the Party's representative(s) on the Board. The vote of the Party's governing board to veto any of the actions specified in Section 19 of this Agreement shall be evidenced by a certified copy of the resolution of the governing board of such Party filed with the Agency no later than 30 days after the date of the Agency's action which is the subject of the veto. A Party may exercise its veto power within the 30 days by an affirmative vote of the majority of the Party's governing board, whether or not the Director(s) and/or alternates representing the Party were present and/or regardless of the vote of the Director(s) and/or alternate(s).

PLANNING

21. Planning Policy. In keeping with the purpose of this Agreement, the Parties hereby authorize and direct the Board to undertake and/or participate in such studies and planning as necessary to provide for the control of waters of or within the boundaries of the Parties. The specific objective thereof shall be to obtain a regional solution to the Water Control problems. To achieve this objective, the studies and planning may include, but are not limited to, proposals for the construction of an upstream storage dam, the rehabilitation or elevation of levees, and assumption and/or maintenance of Water Control works of any of the Parties of the Agency. The studies and planning shall also concentrate on the financing methods for such proposals, as well as the allocation of costs among the Parties. Consideration shall be given to the value to the Agency of acquiring and/or operating Facilities presently owned by Parties and the allocation of the maintenance and operating costs to the Parties.

PROJECTS

22. Projects. The Agency's Projects are intended to consist of developing, designing, acquiring, and constructing Works and Facilities as well as funding (including local cost shares of federal projects) of the same, required to attain interim 100, and 200-year flood protection as well as the resolution of Water Control problems within the boundaries of the Agency. The Agency may undertake the construction, rehabilitation or funding of all or any portion of the Projects on its own or in conjunction and

cooperation with the United States, the State of California, or other public entity. Construction, rehabilitation or funding of Project Facilities may be all at one time or in sequence.

BUDGETS AND PAYMENTS

23. Budget. Within 90 days after the first meeting of the Board, and thereafter prior to the commencement of each fiscal year, the Board shall adopt a Budget for the Agency for the ensuing fiscal year.

24. Contributions for Operating Expenses: (a) The initial commitment of operation funds to the Agency shall be made by the City and the Water Agency, subject to the budget approval process of each Party.

(b) It is understood that upon the formation of the Agency, the City and the Water Agency shall be reimbursed for those costs incurred since March 1, 1989 for the establishment and operation of the Agency.

(c) It is understood that the Board may arrange for the payment of the expenses of the Agency through some other source, including but not limited to state or federal grants or loans; provided, however, that the Agency may not assess a Party directly for the costs for the operation and maintenance of Works and Facilities, for the payment of administrative expenses or for the satisfaction of any liabilities imposed against the Agency without such Party's consent.

(d) The Board may raise additional funds for the operating expenses of the Agency from time to time by levying and

collecting special benefit assessments in accordance with the provisions of Section 25 of this Agreement.

(e) In accordance with Government Code Section 6512.1, repayment or return to the Parties of all or part of any contributions made by the Parties may be directed by the Board at such time, and upon such terms as may be consistent with any revenue bond issue. The Agency shall hold title to all funds, property and Works acquired by it during the term of this Agreement.

25. Operation and Maintenance Assessments: The Agency is hereby empowered to raise funds for the operation and maintenance of Works and Facilities, for the payment of administrative expenses, and for the satisfaction of any liabilities imposed against the Agency by the levy and collection of operation and maintenance assessments in the same manner as provided for reclamation districts under Article 3, Part 7, Division 15, of the Water Code of the State of California (commencing at Section 51320), except that wherever reference is made in said Article 3 to the "board of supervisors," the Board of Directors of the Agency shall be substituted therefor and shall perform all functions otherwise performed by the board of supervisors. The Board may order the creation of a separate assessment roll to support a discrete Project and levy assessments against such roll for the costs of operation and maintenance of Works and Facilities and for the satisfaction of liabilities imposed against the Agency arising from said discrete Project. In the

event that a roll for a discrete Project is created, an assessment for satisfaction of any liabilities imposed against the Agency arising from said discrete Project shall be levied against such roll.

26. State and Federal Grants and Loans. It is understood and acknowledged that some Projects may qualify for grant or loan funding from the State of California or the federal government. The Board shall have the power, in its discretion, to contract for such funding of eligible Projects. Funds received by the Agency from such sources may be used to pay for, reimburse or otherwise finance such eligible Projects.

27. Reimbursement of Funds. Funds received by the Agency from any federal, state or local agency to pay for budgeted expenditures for which the Agency has received all or a portion of said funds from its Parties shall be proportionately paid to said Parties to reimburse the Parties for the funds advanced to the Agency for the acquisition, construction, operation and maintenance of the Facilities or Works for which such funds have been received.

BOND FINANCING

28. Revenue Bonds. (At such time as may be authorized by implementing legislation,) the Board shall have the power and authority to issue revenue bonds for the purposes and in accordance with the procedure and requirements set forth in Article 2, Title 1, Division 7 of the Government Code of the State of California (commencing at Section 6540).

29. Improvement Bonds. The Board shall have the power and authority to issue: a) improvement bonds for the purposes and in accordance with the procedures and requirements set forth in the Municipal Improvement Act of 1913, Chapter 1, Division 12, of the Streets and Highways Code of the State of California (commencing at Section 10000); b) improvement bonds for the purposes and in accordance with the procedures and requirements set forth in the Improvement Act of 1911, Division 7 of the Streets and Highways Code of the State of California (commencing at Section 5000) and c) improvement bonds for the purposes and in accordance with the procedures and requirements of the Improvement Bond Act of 1915, Division 10 of the Streets and Highways Code of the State of California (commencing at Section 8500).

MAINTENANCE AND OPERATION OF FACILITIES.

30. Maintenance and Operation of Facilities. The Board shall determine prior to the acquisition or construction of any Project, whether or not the Agency shall maintain and/or operate such Facilities. If the Agency is to maintain and/or operate such Facilities, it shall do so in an efficient and economical manner and in a manner not detrimental to the other Parties. It is the intent of the Parties that any Project may be maintained and operated in the name of the Agency although, as herein provided, a majority of the Participating Directors shall make all determinations of the Agency in connection therewith. If it is determined that one or more of the Parties shall maintain and/or operate said Facilities, said Parties shall by written agreement consent thereto prior to the acquisition or construction thereof.

ACCOUNTING AND AUDITS

31. Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Agency's controller and treasurer shall comply strictly with requirements of the statute governing joint powers agencies, Chapter 5, Division 7, Title 1 of the Government Code commencing at Section 6500.

32. Audit. The records and the accounts of the Agency shall be audited annually by the County Auditor and copies of such audit reports shall be filed with the State Controller and each Party within six months of the end of the fiscal year under examination.

PROPERTY RIGHTS

33. Agency Facilities. All Facilities constructed or acquired by the Agency shall be held in the name of the Agency for the benefit of the membership of the Agency in accordance with the terms of this Agreement.

34. Liabilities. The debts, liabilities and obligations of the Agency shall be the debts, liabilities or obligations of the Agency alone and not of the Parties to this Agreement.

LIABILITY OF BOARD

35. Except as otherwise provided in this Agreement, the funds of the Agency shall be used to defend, indemnify and hold harmless the Agency and any Director for their actions taken within the scope of the authority of the Agency. Nothing herein shall limit the right of the Agency to purchase insurance to provide such coverage as is hereinabove set forth.

RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT

36. Term. The Agency shall continue until this Agreement is rescinded or terminated as herein provided.

37. Rescission or Termination. This Agreement may be rescinded and the Agency terminated by unanimous written consent of the Parties. Nothing in this Agreement shall prevent the Parties from entering into other joint exercise of power agreements regarding Regional Water Control problems.

38. Disposition of Property Upon Termination. Upon termination of this Agreement, any surplus funds on hand shall be returned to the then Parties in proportion to the contributions made. The Board shall first offer any Works, Facilities, rights and interests of the Agency for sale to the Parties for good and adequate consideration. If no such sale is consummated, the Board shall offer such Works, Facilities, rights and interests of the Agency for sale to any governmental agency, or other entity for good and adequate consideration. The net proceeds from any sale shall be distributed among the Parties in proportion to the contributions made. If no such sale is consummated, then the

Works, Facilities, rights and interests of the Agency shall be allocated to the Parties in the same manner as the allocation of the net proceeds from a sale, unless otherwise agreed to by all of the Members.

39. Withdrawal. (a) Subject to Paragraph 3 of this Agreement, no Party may withdraw from the Agency without the unanimous consent of the Parties. Any withdrawal with unanimous consent shall be effective on the last day of a specified fiscal year in which the withdrawal is consented to.

(b) In the event the withdrawing Party has any rights in any Facilities or obligations to the Agency, said Party cannot sell, lease or transfer said rights or be relieved of its obligations, except its obligation to pay its share of operation and maintenance costs directly related to the use of the Facilities, without the execution of a written agreement executed by it and all Parties affected by such withdrawal. The Agency may not sell, lease, transfer or use any rights of a Party who has withdrawn without first obtaining the written consent of the withdrawn Member.

(c) No refund or repayment of the initial commitment of funds shall be made to a Party ceasing to be a party to this Agreement whether pursuant to this Section or any other Section of this Agreement. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made.

40. Admission of New Parties. It is recognized that public entities, other than the original Parties, may wish to participate in the Agency. Additional public entities may become Parties of the Agency upon such terms and conditions as provided by the Board with the unanimous consent of each existing Party of the Agency, evidenced by the execution of a written addendum to this Agreement signed by all of the Parties, including the additional Party.

41. Amendments. This Agreement may be amended only by the unanimous vote of all Parties.

42. Assignment; Binding on Successors. Except as otherwise provided in this Agreement, 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. 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. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties hereto.

43. Notice. Any notice or instrument required to be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to the addresses of the Parties as shown on Exhibit A, shall be deemed to have been received by the Party to whom the same is addressed at the expiration of 72 hours after deposit of the same

in the United States Post Office for transmission by registered or certified mail as aforesaid.

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

CITY OF SACRAMENTO

COUNTY OF SACRAMENTO

By Anne Ruedin
Mayor

Sandra R. Smoley
Chairperson

ATTEST
Terrie Blanton
City Clerk



ATTEST
Terrie Blanton
Clerk of the Board

APPROVED AS TO FORM
James M. Day
City Attorney

APPROVED AS TO FORM
Michelle Bush
County Counsel

RECLAMATION DISTRICT 1000

SACRAMENTO COUNTY WATER AGENCY

By Maguel Baranda
Chairperson

Sandra R. Smoley
Chairperson

ATTEST:
Terrie Figueroa
Secretary



ATTEST:
Terrie Blanton
Clerk of the Board

APPROVED AS TO FORM:
James M. Day
Attorney

APPROVED AS TO FORM:
Michelle Bush
County Counsel

AMERICAN RIVER FLOOD CONTROL DISTRICT

By Gregory H. Campbell
Chairperson

ATTEST:
Fred J. Steinberg
Secretary

APPROVED AS TO FORM

George Basye
George Basye, Attorney

COUNTY OF SUTTER

By [Signature]
Chairperson

ATTEST: LONNA B. SMITH

By: Judy Buswell
Clerk of the Board Deputy

APPROVED AS TO FORM

County Counsel



SUTTER COUNTY WATER AGENCY

By [Signature]
Chairperson

ATTEST: LONNA B. SMITH

By: Judy Buswell
Clerk of the Board Deputy

APPROVED AS TO FORM:

County Counsel



MB:df/rh
jpa

**County of Sacramento Board of Supervisors
700 H Street, Rm 2450
Sacramento, CA 95814**

**Grantland Johnson
District 1**

**Illa Collin
District 2**

**Sandra Smoley
District 3**

**Jim Streng
District 4**

**Toby Johnson
District 5**

**City of Sacramento
915 I Street
Sacramento, CA 95814**

Mayor Anne Rudin

**Lynn Robie
District 8**

**Terry Kastanis
District 7**

**Reclamation District 1000
1633 Garden Highway
Sacramento, CA 95833**

**Elwin F. (Bill) Christophel
RD 1000 Board of Trustees**

**Manual Barandas
RD 1000 Board of Trustees**

**American River Flood Control District
2590 Venture Oaks Way
Sacramento, CA 95811**

**Jess Nickless
ARFCD Board of Trustees**

**Fred Steinkamp
ARFCD Board of Trustees**

**County of Sutter Board of Supervisors
463 Second Street
Yuba City, CA 95991**

**Barbara LeVake
Board of Supervisors**

c:\wp50\fc\jpaexhib.sm



City of Sacramento

Item 37 Reso 2009-434
Tax ID # if applicable: 0615

Requires Council Approval: No YES Meeting: 6/23/09

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: Professional Services Formal Bid-Prof Service	PO Type:	Attachment: Original No.:
\$ Not to Exceed: \$		Original Doc Number:
Other Party: Sacramento Area Flood Control Agency (SAFCA)		Certified Copies of Document::
Project Name: Personnel Services		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-MWBE:

Department Information

Department: Utilities Division: Bus Svcs Division
 Project Mgr: Terrance Davis Supervisor:
 Contract Services: Date: Division Mgr: Marty Hanneman
 Phone Number: 916-808-4929 Org Number: 14001011
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:	n/a	n/a
Contract Services:		
Supervisor:		
Division Manager:		

City Attorney Signature or Initial Date
 City Attorney: 6-23

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director		
Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		6-25

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:
Initial:
Date:

Imaged:
Initial:
Date:

Received:
(City Clerk Stamp Here)

With: Sacramento Area Flood Control Agency (SAFCA)
 Title: Personnel Services
 Authorization: Reso 2009-434

2009-0615

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JUN 25 2009

**AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY FOR PERSONNEL SERVICES**

THIS AGREEMENT, hereinafter referred to as "AGREEMENT" is made and entered into this 24th day of June 2009, in the City of Sacramento, California by and between the SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint exercise of powers agency of the State of California, hereinafter referred to as "SAFCA" or "The Agency", and the CITY OF SACRAMENTO, a charter municipal corporation, hereinafter referred to as "CITY."

RECITALS

WHEREAS, SAFCA was created in 1989 as a joint exercise of powers agency of the State of California pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, by a Joint Exercise of Powers Agreement between the CITY, the County of Sacramento, the County of Sutter, Reclamation District 1000, and the American River Flood Control District, hereinafter referred to as "JPA AGREEMENT"; and

WHEREAS, the Sacramento Area Flood Control Agency Act (Stats. 1990, Chapter 510, S.B. 46, amended by SB 930 (2007)), hereinafter referred to as "ACT", granted SAFCA specific powers and authorities necessary to plan, design, construct, operate, and maintain flood control and environmental restoration projects, alone or in cooperation with other entities; and

WHEREAS, the JPA AGREEMENT, Section 19, states in part that, "The Executive Director of the Agency...shall have the power:... (b) To appoint and remove all Agency employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement"; and

WHEREAS, since its inception SAFCA has been staffed, through agreements with the County of Sacramento and the CITY, by a combination of positions maintained within the personnel management systems of each entity; and

WHEREAS, the CITY currently provides five positions for SAFCA's organizational needs, including SAFCA Agency Counsel, SAFCA Director of Planning, SAFCA Deputy Director, Administrative Services Officer, and Program Analyst; and

WHEREAS, SAFCA has determined that in order to achieve administrative efficiency, equity and balance among the various job classifications within SAFCA, to provide promotional and career development opportunities for SAFCA staff, and to help assure SAFCA's long-term organizational sustainability, it is desirable to consolidate all of SAFCA's civil service positions within the CITY personnel management system; and

WHEREAS, SAFCA proposes to accomplish this goal by offering existing SAFCA employees who are not in CITY positions the opportunity to transition to CITY positions on a voluntary basis, and to phase out SAFCA's County of Sacramento positions as they become vacant by filling CITY positions in their stead; and



2009-0615

With: Sacramento Area Flood
Control Agency (SAFCA)
Title: Personnel Services
Authorization: Reso 2009-434

WHEREAS, SAFCA Board Resolution 09-045, dated June 8, 2009 authorizes the SAFCA Executive Director to enter into an agreement with CITY to reimburse CITY for all of its costs in connection with the SAFCA positions established within the CITY personnel management system and to update the agreement from time to time to reflect changes in SAFCA's position classifications, pay ranges, and other conditions of employment; and

WHEREAS, the CITY is willing to provide the various required positions for SAFCA's organizational needs on the terms and conditions specified herein; and

WHEREAS, City Council Resolution 09-_____, dated June 23, 2009 authorizes the City Manager to enter into an agreement with SAFCA to establish positions within the CITY personnel management system for all of the positions proposed by SAFCA and to receive reimbursement from SAFCA for all of its costs in connection with the SAFCA positions established within the CITY personnel management system;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, SAFCA and CITY agree as follows:

AGREEMENT

1. SCOPE OF SERVICES

CITY shall establish the SAFCA positions shown in Attachment 1, incorporated into this Agreement by this reference, hereinafter referred to as "SAFCA Positions".

CITY shall appoint SAFCA's existing employees, who are either existing County of Sacramento or City of Sacramento employees or employees working under contract for SAFCA to the SAFCA Positions as requested by SAFCA and by the individual employees, who for purposes of payment and benefits only, shall be CITY employees.

The appointed individuals will be SAFCA employees for all purposes except payment and benefits, and SAFCA shall provide working space, tools and supplies as it deems necessary for employees to carry out their respective duties as set forth in the duty statements for each position. SAFCA shall have sole authority to direct, modify and manage SAFCA employee work schedules in accordance with the Agency's staffing needs, priorities and requirements.

SAFCA shall be solely responsible for recruitment, hiring, promotion, transfer, supervision, training, any personnel disciplinary actions, up to and including demotion or dismissal, and any legal actions necessary to defend such personnel actions in any judicial or quasi-judicial actions, with respect to all SAFCA employees whose positions are covered by this Agreement.

SAFCA employees in CITY union represented classifications shall be bound to the employment terms and conditions of the approved memorandum of understanding or other agreements negotiated with the CITY by the corresponding classification's bargaining unit.

CITY
AGREEMENT NO. _____

2. TERM OF AGREEMENT

Unless amended pursuant to Section 11 or terminated pursuant to Section 10 herein, this Agreement shall remain in effect indefinitely.

3. COMPENSATION

CITY shall pay the employees in the SAFCA Positions within the salary ranges set forth in Attachment 1. CITY approved equity or other increases in the salary ranges set forth in Attachment 1 shall be applicable to SAFCA Positions in the affected salary range. Within that salary and step range, the exact compensation shall be as determined by the SAFCA Executive Director, who shall also have the authority to grant step increases.

4. SCHEDULE FOR PERFORMANCE

CITY agrees to exercise reasonable efforts under the terms of this Agreement to complete all actions necessary to allow appointments to the vacant SAFCA Positions shown in Attachment 1 by January 1, 2010.

5. INVOICING AND PAYMENT

SAFCA shall reimburse the CITY an amount equal to direct salary costs, indirect overhead, administrative expenses as calculated by the CITY on an annual basis, and direct benefits costs including but not limited to social security, medical and dental insurance coverage, vacation, sick leave, management and personal leave and retirement.

CITY shall submit periodic invoices, not more frequently than monthly, for reimbursement of these costs incurred in connection with the SAFCA Positions. Invoices shall show actual salary and benefit costs and the allowances for administrative overhead. SAFCA shall pay the periodic invoices within thirty (30) days following receipt of the periodic invoice.

SAFCA's reimbursement obligations hereunder shall survive any expiration of termination of this Agreement until such time as all reimbursable costs incurred by CITY pursuant to this agreement are reimbursed in full.

6. NOTICES

Any notices or other communications to be given to either party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

SAFCA:

SACRAMENTO AREA FLOOD CONTROL AGENCY
1007 - 7th Street, Seventh Floor
Sacramento, CA 95814-3407

CITY
AGREEMENT NO. _____

ATTENTION: Julie Lienert, Director of Administration

CITY:

AGREEMENT NO. 2009-_____
CITY OF SACRAMENTO
Department of Utilities, Office of the Director
1395 35th Avenue, Sacramento, CA 95822

ATTENTION: Terrance Davis, Program Specialist

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing shall preclude the giving of personal notice or notice by facsimile machine or email, provided, however, that notice by facsimile machine or email shall be followed by notice deposited into the United States mail as specified above.

Either party may change the address to which subsequent notice and/or other communications can be sent by giving prior written notice designating a change of address to the other party.

7. INDEMNIFICATION AND INSURANCE

SAFCA, by execution of this Agreement, specifically agrees to hold harmless, defend and fully indemnify CITY, its officers, agents, and employees from and against any and all actions, claims, loss, liability, damage and expense, including reasonable attorney fees whether for in-house or outside counsel, to the extent caused by any act or omission of SAFCA, any SAFCA official and/or SAFCA employees whose positions are covered by this Agreement.

During the term of this agreement, CITY shall fully comply with the requirements of the laws of the State of California respecting workers compensation insurance and disability coverage for SAFCA positions included in the CITY's personnel management system.

The provisions of this Section shall survive the expiration or termination of this Agreement.

8. NON-DISCRIMINATION IN EMPLOYMENT

A. SAFCA shall not discriminate against any employee, applicant for employment or volunteer because of race, color, creed, religion, national origin, sex, age, or physical or mental disability. SAFCA shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, national origin, age, or physical or mental disability. Such action shall include, but not be limited to the following:

- Employment, promotion, demotion or transfer;
- Recruitment or advertisement for vacant positions, layoff or termination;
- Rates of pay or other forms of compensation; or
- Selection for training, including apprenticeship.

CITY
AGREEMENT NO. _____

SAFCA agrees to post in conspicuous places, available to employees and applicants for employment notices that SA FCA shall provide an atmosphere free of sexual harassment for employees, clients, and volunteers.

B. SAFCA shall, in all solicitations or advertisements for employees placed by or on behalf of CITY state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, or physical or mental disability.

9. FINANCIAL RECORDS

CITY shall retain all financial records, including, but not limited to, documents, reports, books and accounting records which pertain to any cost reimbursed pursuant to this Agreement for four (4) years after the termination of this Agreement, or until audited. SAFCA or any duly authorized representative of SAFCA shall, with reasonable notice, have access to, and the right to examine, audit, and copy such records.

10. TERMINATION

A. Employees: SAFCA's Executive Director shall have the right to terminate the employment of employees serving in SAFCA positions at any time. Upon termination, SAFCA shall immediately notify City and will be responsible for all costs associated with said termination including payment for accrued vacation and other leave, plus the allowance for administrative overhead. CITY shall have no responsibility for continuing the employment of any SAFCA employee dismissed by the SAFCA Executive Director pursuant to this Agreement.

Employees in CITY union represented classifications shall be bound to the employment terms and conditions governing separation as specified by CITY approved labor agreements, other negotiated agreements, and/or the Rules of the Civil Service Board.

B. Agreement: This Agreement may be terminated by either party on 90 days advance, written notice.

11. AMENDMENTS

Modifications or amendments to the terms of this Agreement shall be in writing and duly approved and executed by both parties. Additions, deletions, or reclassifications of the SAFCA positions are expected from time to time, and shall only require the written consent of the SAFCA Executive Director and the City Manager, or their designees. Attachment 1 shall be revised, signed, and dated each time it is amended. No other revision to this Agreement shall be required to revise Attachment 1, and all other provisions shall remain in full force and effect.

12. SUCCESSORS AND WAIVERS

This Agreement shall bind the successors of SAFCA and CITY in the same manner as if they were expressly named. Waiver by either 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.

**CITY
AGREEMENT NO. _____**

13. ASSIGNMENT

Neither party shall assign or transfer its duties, responsibilities or interests pursuant to this Agreement without the express written consent of the non-assigning party.

14. INTERPRETATION AND ENFORCEMENT

The laws of the State of California shall govern interpretation and enforcement of this Agreement.

15. PARTIES TO AGREEMENT:

CITY and SAFCA are the only parties to this Agreement. The member entities making up SAFCA are not parties and are not liable for any SAFCA obligation set forth herein.

16. ENTIRE AGREEMENT

This instrument and Attachment 1 attached hereto constitute the entire Agreement between SAFCA and the CITY concerning the subject matter hereof. Any prior agreements, whether oral or written, between SAFCA and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement

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

SACRAMENTO AREA FLOOD CONTROL AGENCY

CITY OF SACRAMENTO

By Stein M. Buer
Stein M. Buer
Executive Director

6/19/09
Date

By Ray Kerridge
Ray Kerridge
City Manager

6-22-09
Date

APPROVED AS TO FORM:

By Holly Gilchrist
Holly Gilchrist
Agency Counsel

6/19/09
Date

By Joe Robinson
Joe Robinson
Senior Deputy City Attorney

6/23/09
Date

ATTEST:

City Clerk

CITY AGREEMENT NO. _____

ATTACHMENT 1

SACRAMENTO AREA FLOOD CONTROL AGENCY (SAFCA)
 CITY POSITIONS

SAFCA Position	# of Positions	City Position	Salary Range
Executive Director	1	SAFCA Executive Director	\$136,000 - \$204,000
Agency Counsel	1	SAFCA Counsel	\$138,615 - \$187,537
Deputy Director	1	SAFCA Deputy Director	\$123,000 - \$184,000
Chief Financial & Admin Services Officer	1	SAFCA Chief Financial Officer	\$119,917 - \$166,318
Director of Planning	1	SAFCA Director of Planning	\$117,864 - \$176,784
Director of Engineering	2	SAFCA Director of Engineering	\$111,457 - \$150,795
Natural Resources Manager	2	Program Manager	\$57,948 - \$102,456
Accountant II	1	Senior Accountant Auditor	\$57,348 - \$86,016
Natural Resource Specialist II	1	Junior Landscape Architect	\$46,860 - \$65,940
Executive Secretary	1	Administrative Assistant	\$42,948 - \$64,416
Accounting Technician	1	Accounting Technician	\$34,392 - \$48,384
Secretary	1	Secretary	\$33,060 - \$46,524
Accounting Student Intern	1	Student Trainee	\$21,024 - \$28,536

APPROVED:

BY: Stein M. Buer
 Stein M. Buer, Executive Director, SAFCA

6/19/09
 Date

BY: Marty Hanneman
 Marty Hanneman, Assistant City Manager
 For: Ray Kerridge, City Manager, June 25, 2009

Date

Attest on: 7-1-09 (date)

Shirley Concolero
 Dawn Bullwinkel, Assistant City Clerk

CITY
 AGREEMENT NO. _____

RESOLUTION NO.

Adopted by the Sacramento City Council

Termination of Interagency Agreement with the Sacramento Area Flood Control Agency (SAFCA); Termination of Personnel Services Agreement with SAFCA; Reallocation Agreement with SAFCA and CalPERS;

BACKGROUND

- A. The Sacramento Area Flood Control Agency (SAFCA) was created in 1989 as a Joint Exercise of Powers Agency (JPA) to provide local support for a comprehensive plan of flood control improvements for the Sacramento area.
- B. All of SAFCA's personnel services have continued to be administered through agreements with the City or County.
- C. Since 2012, the City and SAFCA have worked to transition SAFCA to a self-administered personnel management system that will: (1) resolve the conflict between the SAFCA JPA and the current personnel management system, (2) address administrative concerns which are impacting both the City's and SAFCA's efficient operations, (3) address concerns raised by CalPERS regarding the semi-autonomous nature of the current system; and (4) resolve potential conflicts with the Internal Revenue Code for SAFCA, and the City.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to execute a Termination Agreement between the City of Sacramento and the Sacramento Area Flood Control Agency, terminating the interagency agreement.
- Section 2. The City Manager is authorized to execute the Termination Agreement between the City of Sacramento and the Sacramento Area Flood Control Agency, terminating the personnel services agreement, attached to the Resolution as Exhibit A.
- Section 3. The City Manager is authorized to execute the Reallocation Agreement between the City of Sacramento, the Sacramento

Area Flood Control Agency, and California Public Employees' Retirement System (CalPERS), attached to the Resolution as Exhibit B.

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT, hereinafter referred to as “AGREEMENT” is made and entered into this ___ day of _____, 2015, in the City of Sacramento, California, by and between the SACRAMENTO AREA FLOOD CONTROL AGENCY (“SAFCA”), and the CITY OF SACRAMENTO (“CITY”), sometimes collectively referred to as “Parties.”

RECITALS

WHEREAS, SAFCA was created as a joint exercise of powers agency of the State of California pursuant to Article 1(commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, and dated November 21, 1989, by a Joint Exercise of Powers Agreement between CITY, the County of Sacramento, the County of Sutter, Reclamation District 1000, and the American River Flood Control District (“JPA AGREEMENT”), which was most recently amended on January 17, 1991; and

WHEREAS, the Sacramento Area Flood Control Agency Act (Stats. 1990, Chapter 510, S.B. 46, amended by SB 930 (2007)) (“ACT”), granted SAFCA specific powers and authorities necessary to plan, design, construct, operate, and maintain flood control and environmental restoration projects, alone or in cooperation with other entities. It granted SAFCA the powers to assess benefiting existing properties and new development, incur debt, including the issuance of bonds, to finance these projects; and

WHEREAS, the JPA AGREEMENT, Section 19, states in part that, “The Executive Director of the Agency...shall have the power:... (b) To appoint and remove all Agency employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement”; and

WHEREAS, SAFCA and CITY entered into an Agreement for Personnel Services (City Agreement No. 2009-0615) dated June 24, 2009 (“PERSONNEL SERVICES AGREEMENT”) to establish positions within the CITY personnel management system for all of the positions proposed by SAFCA, and for CITY to receive reimbursement from SAFCA for all of its costs in connection with the SAFCA positions established within the CITY personnel management system and to update the agreement from time to time to reflect changes in SAFCA's position classifications, pay ranges, and other conditions of employment; and

WHEREAS, SAFCA now desires to self-administer its personnel management system including, but not limited to, the appointment of employees, and the provision of compensation and benefits, effective upon the effective date of a defined benefit retirement contract with the California Public Employees Retirement System (CalPERS); and

WHEREAS, SAFCA and CITY desire to terminate the PERSONNEL SERVICES AGREEMENT subject to certain mutually agreeable conditions; and

WHEREAS, concurrently with this AGREEMENT, SAFCA and CITY shall enter into a Reallocation Agreement (“REALLOCATION AGREEMENT”) with CalPERS by which CalPERS will retroactively treat the SAFCA employees listed on Exhibit A, attached hereto and incorporated

herein by this reference, (“MEMBERS”) as employees of SAFCA and will reallocate all of the assets and liabilities associated with the Members from the CITY’s CalPERS contract to SAFCA’s CalPERS contract.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, SAFCA and, CITY agree as follows:

AGREEMENT

1. TERMINATION OF PERSONNEL SERVICES AGREEMENT

1.1 SAFCA and CITY agree to voluntarily terminate the PERSONNEL SERVICES AGREEMENT, and any amendments thereto, effective upon the effective date of SAFCA’s contract with CalPERS for a defined benefit retirement plan.

1.2 SAFCA shall reimburse CITY and pay any outstanding invoices for payment as outlined in Section 5 of the PERSONNEL SERVICES AGREEMENT within thirty (30) days following receipt of any invoice or request for reimbursement. Section 5 of the PERSONNEL SERVICES AGREEMENT shall survive the termination of the PERSONNEL SERVICES AGREEMENT, and continue to be in full force and effect.

1.3 Section 7. “Insurance and Indemnification” of the PERSONNEL SERVICES AGREEMENT shall survive the termination of the PERSONNEL SERVICES AGREEMENT, and continue to be in full force and effect, including any personnel actions that are, or may be, filed by SAFCA employees that were in the CITY’s system during the term of the Personnel Services Agreement or other liabilities that may arise from the provision of human resources services to SAFCA employees.

2. HUMAN RESOURCE SERVICES

SAFCA shall be responsible for the appointment, promotion, discipline and termination of all SAFCA employees. SAFCA shall be responsible to pay its employees and the exact compensation shall be as determined by the SAFCA Executive Director, who shall also have the authority to grant step increases. SAFCA shall also be responsible for the payment of all direct benefits costs including social security, medical and dental insurance coverage, vacation, sick leave, and retirement.

3. REIMBURSEMENT OF CITY

SAFCA shall reimburse CITY for all costs, if any, associated with transfer of SAFCA employees from the CITY’s payroll and human resources administration system to SAFCA’s payroll and human resource administration system.

4. INDEMNIFICATION

SAFCA specifically agrees to hold harmless, defend and indemnify CITY, its officers, agents, and employees from and against any and all actions, claims, losses, liabilities, damages, attorney’s fees

and expenses of any kind that may arise out of the PERSONNEL SERVICES AGREEMENT, the termination of the PERSONNEL SERVICES AGREEMENT, or the REALLOCATION AGREEMENT, including, but not limited to, any increased or miscalculated contributions, benefits or taxes that may occur during, or as a result of, the reallocation of assets from the CITY contract with CalPERS to the SAFCA contract with CalPERS.

SAFCA also specifically agrees to hold harmless, defend and indemnify CITY, its officers, agents, and employees from and against any and all actions, claims, losses, liabilities, damages, attorney's fees and expenses of any kind that may arise out of the indemnity obligations outlined in the REALLOCATION AGREEMENT, or which arise as a result of SAFCA's failure to meet its obligations in its contract with CalPERS for a defined benefit retirement plan.

SAFCA also specifically agrees to hold harmless, defend and indemnify CITY, its officers, agents, and employees from and against any and all actions, claims, losses, liabilities, damages, attorney's fees and expenses of any kind arising from unfunded liabilities or other liabilities resulting from changes in the calculations for pension benefits owed to SAFCA employees pursuant to the CITY's agreements with CalPERS.

5. AMENDMENTS

Modifications or amendments to the terms of this Agreement shall be in writing and executed by all parties.

6. SUCCESSORS AND WAIVERS

This Agreement shall bind the successors of the Parties in the same manner as if they were expressly named. Waiver by either 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.

7. INTERPRETATION AND ENFORCEMENT

The laws of the State of California shall govern interpretation and enforcement of this Agreement.

8. PARTIES TO AGREEMENT:

SAFCA and CITY are the only parties to this Agreement. The remaining member entities making up SAFCA are not parties and are not liable for any SAFCA obligation set forth herein.

9. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof. Any prior agreements, whether oral or written, between the Parties regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement

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

SACRAMENTO AREA FLOOD CONTROL AGENCY

CITY OF SACRAMENTO

By _____ Date _____
Richard M. Johnson
Executive Director

By _____ Date _____
John Shirey
City Manager

APPROVED AS TO FORM:

By _____ Date _____
M. Holly Gilchrist
Agency Counsel

_____ Date _____
Brett M. Witter
Supervising Deputy City Attorney

ATTEST:

City Clerk

REALLOCATION AGREEMENT

THIS REALLOCATION AGREEMENT (this "Agreement") is made as of _____, 2015 (the "Effective Date") by and among City of Sacramento (City), Sacramento Area Flood Control Agency (SAFCA), and the California Public Employees' Retirement System ("CalPERS").

WHEREAS, the City currently contracts with CalPERS for retirement benefits for its employees;

WHEREAS, each of the City and the SAFCA hereby represent and warrant to CalPERS that it is an "agency or instrumentality of the state or political subdivision of a State" that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, concurrently with the execution of this Agreement, SAFCA is entering into a contract for retirement benefits with CalPERS (the "Contract") in substantially the same form as the contract between CalPERS and the City;

WHEREAS, the City and SAFCA have represented to CalPERS that certain CalPERS members listed on Exhibit A to this Agreement (the "Members") have historically been incorrectly reported by the City to CalPERS as employees of the City, when in fact they should have been reported as employees of SAFCA;

WHEREAS, the City and SAFCA have directed CalPERS to retroactively treat such Members as employees of SAFCA, and to reallocate all of the assets and liabilities associated with such Members from the City's contract to SAFCA's contract as though such assets and liabilities had always accrued under SAFCA's contract (the "Reallocation"); and

WHEREAS, this Agreement shall not become effective until and unless the Contract is made effective.

NOW, THEREFORE, in consideration of the mutual agreements contained in this Agreement, and for good and valuable consideration, the parties hereby agree as follows:

1. City and the SAFCA agree that the Recitals are hereby incorporated into and are a part of this Agreement.
2. Subject to the terms and conditions of this Agreement and contingent upon the Contract becoming effective, the City and SAFCA hereby consent to the Reallocation. The City, on behalf of itself and any third party beneficiaries, disclaims any ongoing right or benefit to the assets associated with the Members, and SAFCA expressly assumes all obligations, liabilities and duties associated with the Members as a result of their CalPERS membership.
3. That the participation of the employees and retirees of City and SAFCA in CalPERS shall be subject to the determination of its status as an "agency or instrumentality of the state or political subdivision of a State" that is eligible to

participate in a governmental plan within the meaning of Section 414(d) of the Code, upon publication of final Treasury Regulations pursuant to such Section (the "Final Regulations"). If it is determined that either the City or the SAFCA would not qualify as an agency or instrumentality of the state or political subdivision of a State under such Final Regulations, CalPERS will be obligated to comply with the Final Regulations and terminate the City's and/or the SAFCA's participation in CalPERS, as applicable, including cancellation of all benefits for employees and retirees of the City and the SAFCA (the "Termination"). The Termination will comply with any remedial corrections required under the Final Regulations.

4. Notwithstanding, and in addition to, any existing or future obligation that the City and the SAFCA may have to indemnify the CalPERS Parties (as defined below), the City and the SAFCA hereby agree to jointly and severally indemnify and hold CalPERS and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund (together, the "CalPERS Parties") harmless from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, imposed on, sustained or incurred by the CalPERS Parties, to the extent they arise out of or relate to the Reallocation, compliance with the Final Regulations, or the Termination, including, without limitation, attorneys', accountants' and other investigatory fees and out-of-pocket expenses incurred by the CalPERS Parties.

5. Upon request from CalPERS from time to time, the City and the SAFCA shall execute and deliver all documents and do all other acts that may be reasonably necessary to carry out and effectuate the intent and purpose of this Agreement.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

7. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. If any provision of this Agreement is held invalid or unenforceable, such decision shall not affect the validity or enforceability of any other provision of this Agreement, all of which other provisions shall remain in full force and effect, provided that doing so does not materially alter the intent of the parties as contemplated hereby.

9. This Agreement may not be modified or amended in any respect except in a writing signed by all parties. No waiver shall be deemed to have been granted or created by any course of conduct or acquiescence, and no waiver shall be enforceable against any party hereto unless in writing and signed by the party against which such waiver is claimed.

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

CITY OF SACRAMENTO:

By: _____

Name: _____

Title: _____

SACRAMENTO AREA FLOOD
CONTROL AGENCY:

By: _____

Name: _____

Title: _____

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM:

By: _____

Name: Renee Ostrander

Title: Assistant Division Chief

EXHIBIT A

EMPLOYEES

Employees:

John A. Bassett, Director of Engineering
Peter E.F. Buck, Natural Resources Manager
Peter J. Ghelfi, Director of Engineering
M. Holly Gilchrist, Agency Counsel
Richard M. Johnson, Executive Director
Julie N.W. Lienert, Director of Administration
Lyndee A. Russell, Executive Secretary
Oksana A. Rydina, Accountant 1
Alia A. Tayyeb, Secretary
Doua Vang, Accountant Technician
Timothy N. Washburn, Director of Planning

Former Employees:

Lizette Crosbie, Natural Resources Manager
Lin Ho, Senior Auditor Accountant
Tracy Soth, Contract Technician

Retirees:

Stein Buer, Executive Director