

**Meeting Date:** 6/2/2015

**Report Type:** Consent

**Report ID:** 2015-00520

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

**Location:** Citywide

**Recommendation:** Pass a Housing Authority Resolution authorizing the SHRA Executive Director to execute the Termination Agreement with the Sacramento Area Flood Control Agency to terminate the 1989 Interagency Agreement.

**Contact:** David Levin, General Counsel, (916) 440-1330, Sacramento Housing and Redevelopment Agency

**Presenter:** None

**Department:** Sacramento Housing & Redevelopment Agency

**Division:** Sacramento Housing & Redevelopment Agency

**Dept ID:** 99991011

**Attachments:**

1-Description/Analysis

2-Resolution

3-Exhibit A (Termination Agreement)

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**Attorney Review**

Approved as to Form

David Levin

5/22/2015 1:48:14 PM

**Approvals/Acknowledgements**

Department Director or Designee: LaShelle Dozier - 5/20/2015 8:32:33 AM

## Description/Analysis

**Issue Detail:** The Sacramento Area Flood Control Agency (SAFCA) was created in 1989 as a Joint Exercise of Powers Agency (JPA) by the City of Sacramento, the County of Sacramento, the County Water Agencies, and two flood control districts to provide local support for a comprehensive plan of flood control improvements for the Sacramento area. On December 20, 1989, the City of Sacramento, the County of Sacramento, and the Housing Authority of Sacramento entered into an Interagency Agreement to provide the staffing requirements of SAFCA. SAFCA has historically relied on the City and County to provide them with 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, and a separate 2009 Personnel Services Agreement between SAFCA and the City. In order to create a self-administered personnel system, both of these agreements must be terminated.

SHRA staff is recommending termination of the agreement to which the Housing Authority is a party. The agreement resulting in the termination the Interagency Agreement also includes additional terms such as requiring SAFCA to indemnify the Housing Authority from any future and unknown liabilities which may arise as a result of the creation of SAFCA's self-administered personnel system.

**Policy Considerations:** This action is consistent with SAFCA's transition to a self-administered personnel management system and the Termination Agreement was recently approved by both the City and County of Sacramento.

**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, the agreement resulting in the termination the Interagency Agreement includes language that requires SAFCA to indemnify the Housing Authority from any future and unknown liabilities that may arise as a result of the creation of SAFCA's self-administered personnel system.

**Local Business Enterprise (LBE):** Not applicable.

## RESOLUTION NO. 2015 - \_\_

### Adopted by the Housing Authority of the City of Sacramento

#### BACKGROUND

- A. The Sacramento Area Flood Control Agency (SAFCA) was created in 1989 as a Joint Exercise of Powers Agency (JPA) by the City of Sacramento and the County of Sacramento and others to provide local support for a comprehensive plan of flood control improvements for the Sacramento area.
- B. In December 20, 1989 the Housing Authority of the City of Sacramento, the City of Sacramento and the County of Sacramento entered into an Interagency Agreement for the purposes of staffing SAFCA.
- C. Since 2012, SAFCA has worked to transition its organization to a self-administered personnel management system to avoid potential conflicts, improve operations, and address concerns raised by CalPERS regarding the semi-autonomous nature of the current system.
- D. At its April 23, 2015 meeting, the City Council of Sacramento authorized the City Manager to execute the Termination Agreement.
- E. At its May 19, 2015 meeting, the Board of Supervisors of the County of Sacramento authorized the County Executive to execute the Termination Agreement.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:**

- Section 1. The facts as outlined in the background above are found to be true and correct.
- Section 2. The Executive Director is authorized to execute a Termination Agreement between the Housing Authority of the City of Sacramento and the Sacramento Area Flood Control Agency (attached as Exhibit A) , terminating the December 20, 1989 Interagency Agreement, and its amendments, if any.

#### **Table of Contents:**

Exhibit A: Termination Agreement

## 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”), the CITY OF SACRAMENTO (“CITY”), the COUNTY OF SACRAMENTO (“COUNTY”), the SACRAMENTO COUNTY WATER AGENCY (“AGENCY”), and the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO (“HOUSING AUTHORITY”).

### 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 (“JPA AGREEMENT”) between CITY, COUNTY, the County of Sutter, Reclamation District 1000, and the American River Flood Control District. The JPA AGREEMENT 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, CITY, HOUSING AUTHORITY, COUNTY, and AGENCY entered into an Interagency Agreement for the Sacramento Area Flood Control Agency, dated December 20, 1989 (“INTERAGENCY AGREEMENT”) by which SAFCA has been staffed, through agreements variously between SAFCA and COUNTY and/or SAFCA and CITY by a combination of positions maintained within the personnel management systems of each entity; and

**WHEREAS**, SAFCA and the CITY entered into an Agreement Between the City of Sacramento and the Sacramento Flood Control Agency for Personnel Services 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 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, CITY, COUNTY, AGENCY, and HOUSING AUTHORITY desire to terminate the INTERAGENCY AGREEMENT subject to certain mutually agreeable conditions; 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; and.

**WHEREAS**, concurrently with this Agreement, SAFCA and COUNTY shall enter into a new Interagency Agreement by which County will agree to provide information technology, finance, and other services to SAFCA at SAFCA’S cost.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, SAFCA, CITY, COUNTY, AGENCY, and HOUSING AUTHORITY agree as follows:

## **AGREEMENT**

### **1. TERMINATION OF INTERAGENCY AGREEMENT**

1.1 SAFCA, CITY, COUNTY, AGENCY, and HOUSING AUTHORITY agree to voluntarily terminate the INTERAGENCY AGREEMENT (City Agreement No. 1543), and any amendments thereto, concurrently with the effective date of SAFCA’S contract with CalPERS for a defined benefit retirement plan.

1.2 Section 5 “Mutual Indemnification” of the INTERAGENCY AGREEMENT shall survive the termination of the INTERAGENCY AGREEMENT, and continue to be in full force and effect.

### **2. TERMINATION OF PERSONNEL SERVICES AGREEMENT**

2.1 SAFCA and CITY agree to voluntarily terminate the PERSONNEL SERVICES AGREEMENT (City Agreement No. 2009-0615), and any amendments thereto, concurrently with the effective date of SAFCA’S contract with CalPERS for a defined benefit retirement plan.

2.2 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.

2.3 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.

**3. 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.

**4. REIMBURSEMENT OF CITY AND COUNTY**

SAFCA shall reimburse CITY and COUNTY for all costs, if any, associated with transfer of SAFCA employees from the CITY’S or COUNTY’S payroll and human resources administration system to SAFCA’s payroll and human resource administration system, including any and all costs, as determined by COUNTY and SCERS, associated with COUNTY’S issuance of Pension Bonds attributable to SAFCA employees that were in the County personnel system and retired as SAFCA employees.

**5. 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 to the extent caused by any act or omission of SAFCA and SAFCA employees whose positions were covered by the INTERAGENCY AGREEMENT or PERSONNEL SERVICES AGREEMENT.

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 Paragraph 4 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 agreement with CalPERS.

SAFCA also specifically agrees to hold harmless, defend, and indemnify COUNTY, 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 COUNTY'S agreement with the Sacramento County Retirement System (SCERS).

**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, CA95814-3407  
ATTENTION: Richard Johnson, Executive Director

**CITY:**

AGREEMENT NO.2009 \_\_\_\_\_  
CITY OF SACRAMENTO  
Department of Human Resources  
Administration Division  
915 I Street  
Sacramento, CA 95814  
Attn: Geri Hamby, Director

**COUNTY:**

County of Sacramento  
Internal Services  
700 H Street, Suite 7650  
Sacramento, CA 95814  
Attn: David Villanueva

**AGENCY:**

Sacramento County Water Agency  
DWR Main Office  
827 7th Street, Room 301  
Sacramento, CA, 95814  
Attn: Michael Peterson, Director

**HOUSING AUTHORITY:**

Housing Authority of the City of Sacramento  
801 12th Street  
Sacramento, CA 95814  
Attn: La Shelle Dozier, Executive Director

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 discussed 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. AMENDMENTS**

Modifications or amendments to the terms of this Agreement shall be in writing 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. Exhibit 1 shall be revised, signed, and dated each time it is amended. No other revision to this Agreement shall be required to revise Exhibit 1, and all other provisions shall remain in full force and effect.

**8. 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.

**9. INTERPRETATION AND ENFORCEMENT**

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

**10. 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.

**11. ENTIRE AGREEMENT**

This instrument attached hereto constitute the entire Agreement between the SAFCA and 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 \_\_\_\_\_  
Richard M. Johnson Date  
Executive Director

By \_\_\_\_\_  
John Shirey Date  
City Manager

**HOUSING AUTHORITY OF THE CITY OF SACRAMENTO**

BY \_\_\_\_\_  
La Shelle Dozier,  
Executive Director

**COUNTY OF SACRAMENTO**

By: \_\_\_\_\_  
Bradley J. Hudson  
County Executive

**SACRAMENTO COUNTY WATER AGENCY**

By: \_\_\_\_\_  
Michael Peterson, Director

**APPROVED AS TO FORM:**

By \_\_\_\_\_ Date \_\_\_\_\_  
M. Holly Gilchrist Deputy City Attorney  
Agency Counsel

By: \_\_\_\_\_  
Krista Whitman  
Assistant County Counsel

By: \_\_\_\_\_  
David Levin  
Authority Counsel

By: \_\_\_\_\_  
Sarah Britton  
Agency Counsel

**ATTEST:**

\_\_\_\_\_  
City Clerk

*DRAFT*