

RESOLUTION NO. 2015-0094

Adopted by the Sacramento City Council

April 23, 2015

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.

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Exhibit A – Termination Agreement

Exhibit B – Reallocation Agreement

Adopted by the City of Sacramento City Council on April 23, 2015, by the following vote:

Ayes: Members Ashby, Carr, Hansen, Harris, Jennings, Schenirer and Warren

Noes: None

Abstain: None

Absent: Mayor Kevin Johnson

Vacant: District 6

Attest:

Shirley Concolino

Digitally signed by Shirley Concolino
DN: cn=Shirley Concolino, o=City of Sacramento, ou=City
Clerk, email=sconcolino@cityofsacramento.org, c=US
Date: 2015.05.05 15:46:43 -07'00'

Shirley Concolino, City Clerk

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