



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604

www.CityofSacramento.org

CONSENT

August 31, 2010

**Honorable Mayor and
Members of the City Council**

**Title: Amendment to Sacramento Area Flood Control Agency (SAFCA)
Joint Exercise of Powers Agreement**

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** authorizing the City Manager to execute an amendment to the SAFCA Joint Exercise of Powers Agreement, to fulfill Central Valley Flood Protection Board (CVFPB) requirements pertaining to satisfaction of flood control project commitments upon termination of the Agreement or withdrawal of a member.

Contact: Joe Robinson, Senior Deputy City Attorney 808-5346

Presenters: NA

Department: Office of the City Attorney

Division: NA

Organization No: 03000

Description/Analysis

Issue: SAFCA is required to obtain permits from the CVFPB in order to construct, operate, and maintain flood control improvements. As a condition of receiving such permits, SAFCA must agree to operate and maintain the improvements and/or indemnify the State for liabilities arising from SAFCA's design, construction, operation, or maintenance of the improvements (collectively referred to as "project commitments"). The CVFPB recently adopted a policy to require assurances from joint powers agencies, such as SAFCA, that these obligations will be met even if the joint powers agency were to be dissolved. To address this new CVFPB requirement, SAFCA has requested that its member agencies approve an amendment to the SAFCA Joint Exercise of Powers Agreement. The proposed amendment provides that the Joint Exercise of Powers Agreement cannot be terminated, nor may a member agency withdraw, so long as there are outstanding project commitments, unless the relevant member or members provide reasonable written assurances to the CVFPB regarding the outstanding project commitments.

Policy Considerations: The proposed amendment is consistent with the CVFPB policy and the general purpose of SAFCA to construct, operate, and maintain flood control improvements vital to the safety and welfare of the Sacramento region.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, administrative activities of this nature do not constitute a "project" and therefore are exempt from CEQA review.

Sustainability Considerations: None.

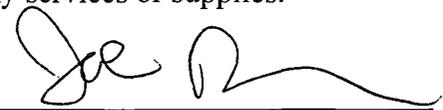
Commission/Committee Action: None.

Rationale for Recommendation: Approval of the proposed amendment is intended to satisfy the provisions of the CVFPB policy, so that SAFCA is able to obtain the CVFPB approvals needed for continued implementation of SAFCA's Natomas Levee Improvement Program. Approval of all member agencies is required to amend the SAFCA Joint Exercise of Powers Agreement.

Financial Considerations: There are no financial impacts associated with approval of the proposed amendment. The proposed amendment, in conjunction with the CVFPB policy, could require the City to assume obligations with respect to flood control improvements within the City's jurisdiction if SAFCA were dissolved or the City were to withdraw from SAFCA. Neither of these actions is anticipated at the present time.

Emerging Small Business Development (ESBD): There are no ESBD considerations, as the recommended action does not involve the procurement of any services or supplies.

Respectfully Submitted by: _____



Joe Robinson
Senior Deputy City Attorney

Recommendation Approved:



Eileen Teichert
City Attorney

Attachments

- | | | |
|---|------------------------------------|---------|
| 1 | Background | pg. 3 |
| 2 | CVFPB Resolution No. 09-17 | pg. 4-6 |
| 3 | Resolution | pg. 7-8 |
| | Exhibit A – | |
| | First Amendment to | |
| | Joint Exercise of Powers Agreement | |

Attachment 1

BACKGROUND

The City of Sacramento is a member agency of the Sacramento Area Flood Control Agency (SAFCA), a joint powers agency (JPA) whose other members are Sacramento County, Sutter County, Sacramento County Water Agency, Sutter County Water Agency, Reclamation District 1000, and the American River Flood Control District. SAFCA currently is implementing the Natomas Levee Improvement Program, which requires approvals from the Central Valley Flood Protection Board (CVFPB).

As a non-federal sponsor of flood improvement projects, the CVFPB is required to provide assurances to the federal government regarding maintenance of the projects and indemnification for liability arising from the projects. Under State law, the CVFPB requires similar assurances from local sponsors when issuing permits for flood improvement projects. When the local sponsor is a JPA, the CVFPB requires such assurances from the JPA, but historically the CVFPB (and its predecessor agency, the Reclamation Board) did not require such assurances from the JPA's member agencies as a condition to issuing a permit, although this was done in some cases.

In January 2009, after receiving public comments regarding the need for a uniform policy to be applied to all JPAs and their member agencies, the CVFPB formed a subcommittee to consider operation, maintenance, and indemnification requirements for JPAs and their member agencies. In workshops attended by SAFCA staff and other JPA representatives, the CVFPB subcommittee considered a variety of alternatives, including a requirement for all of a JPA's member agencies to provide the same assurances as the JPA.

Ultimately, the CVFPB subcommittee rejected this broad approach in favor of allowing assurances to be provided solely by the JPA, provided that the JPA's formation agreement includes language that either (1) prohibits dissolution of the JPA so long as the JPA has outstanding commitments to the CVFPB for operation, maintenance, and indemnification, or (2) requires the JPA's member agencies to provide such assurances prior to dissolution of the JPA. The CVFPB adopted Resolution No. 09-17 approving this policy in December 2009 (see Attachment 2).

SAFCA staff drafted the proposed amendment in response to the CVFPB policy, and SAFCA has requested approval of the amendment prior to the CVFPB's September hearing on SAFCA's permit for the next phase of the Natomas Levee Improvement Program.

**STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
RESOLUTION NO. 09-17**

RESOLUTION REGARDING INDEMNIFICATION AND MAINTENANCE ASSURANCES TO BE FURNISHED BY A JOINT POWERS AGENCY (JPA) ACTING AS THE LOCAL SPONSOR FOR IMPROVEMENTS TO THE FEDERAL/STATE FLOOD CONTROL SYSTEM

WHEREAS, the Central Valley Flood Protection Board (Board) is the non-federal sponsor for the Sacramento River Flood Control Project and the San Joaquin River and Tributaries Project (Projects); and

WHEREAS, the Board has provided maintenance assurances and indemnification to the Federal Government in connection with those projects; and

WHEREAS, California law requires that the Board obtain similar assurances and indemnification from local sponsors when permitting modifications to the Projects; and

WHEREAS, currently five joint powers agencies (JPAs) have been formed for the purpose of improving flood safety in urban regions of the Central Valley and serve as the local sponsor for improvements to the Projects; and

WHEREAS, the Subcommittee further found that the JPA agreements for TRLIA, SAFCA, and WSAFCA include language providing that the member agencies are not liable for the obligations of the JPA, while the agreements for SBFCA and SJAFCA have not yet been reviewed; and

WHEREAS, each JPA has significant urban area within its jurisdiction and is seeking to reduce flood risk in those areas; and

WHEREAS, the JPAs have demonstrated their effectiveness in advancing public safety by providing a single policy body that enables multiple local public agencies involved in flood management activities to work collaboratively in developing and implementing regional flood management plans; and

WHEREAS, regional flood management plans benefit the State by reducing flood risk and improving flood readiness for residents of major flood plains in the Central Valley; and

WHEREAS, the Board formed a fact-finding subcommittee to develop a policy recommendation as to how the Board should secure indemnification from a JPA; and

WHEREAS, the Subcommittee found that if a JPA dissolves, its individual members will continue to benefit from the JPA's authorized flood control projects; and

WHEREAS, the Subcommittee found that it is in the best interest of the State to ensure that some entity other than the State shall ensure that operation and maintenance will be appropriately done in perpetuity, and if not appropriately done, that any liability which arises from this failure should be the responsibility of an entity other than the State; and

WHEREAS, the Subcommittee found that the need to ensure perpetual operation and maintenance and operation and maintenance indemnification is particularly important when JPA formation agreements do not address how operation and maintenance will be covered once the JPA dissolves and in areas that have been heavily urbanized; and

WHEREAS, the Subcommittee found that it is appropriate to require assurances and indemnification to ensure perpetual operation and maintenance in the event a JPA dissolves, but that this requirement could be met through language in the JPA formation agreement; and

WHEREAS, JPAs can delegate maintenance performance to existing LMAs and the JPA's assurance would only come in effect if the local maintaining agency (LMA) was unable to perform maintenance per State/U.S. Army Corps of Engineers standards; and

WHEREAS, the Board agrees with the Subcommittee's conclusion that the most effective maintenance program will be one which is supported by all member agencies of the JPA that developed the plan for the improvements requiring maintenance; and

WHEREAS, the Board agrees with the Subcommittee's conclusion that assurances and indemnification are needed to ensure perpetual operation and maintenance of flood control projects in the event a JPA dissolves, and that these requirements can be met through language in the JPA formation agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL VALLEY FLOOD PROTECTION BOARD THAT:

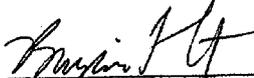
Hence forth, agreements between the Central Valley Flood Protection Board and a Joint Powers Agency should, as appropriate, comply with the following policy:

1. The Central Valley Flood Protection Board will accept indemnification from a Joint Powers Agency without requiring that the resulting obligation be spread to the member agencies of the Joint Powers Agency beyond that currently provided by law.
2. When a JPA serves as the local sponsor for a flood control improvement requiring a Board permit or other form of Board Approval, the Central Valley Flood Protection Board will require that the JPA furnish operation and maintenance assurances for the project and indemnify the State and federal governments from liability arising from that operation and maintenance. In order to meet this requirement, the JPA agreement should provide in language acceptable to the Board:

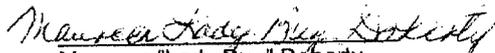
- i. That the JPA will not be dissolved so long as the JPA has made outstanding commitments to the Board for operation and maintenance and operation and maintenance indemnification; or
- ii. That the member agencies will provide the foregoing maintenance assurances and indemnification prior to the JPA dissolving; or
- iii. Such other agreements or assurances as may be acceptable to the Board.

This requirement is not intended to alter existing or future LMA maintenance responsibilities and JPAs may delegate maintenance obligations as they see fit. The Board intends to invoke the JPA maintenance assurance if LMAs are not performing maintenance in compliance with State and Federal standards and before it considers approval of a State Maintenance Area. The Board may insert a permit term to effectuate this policy.

PASSED AND ADOPTED by vote of the Board on 12-17, 2009



Benjamin F. Carter
Board President



Maureen "Lady Bug" Doherty
Board Secretary

RESOLUTION NO.

Adopted by the Sacramento City Council

**AMENDMENT TO SACRAMENTO AREA FLOOD CONTROL
AGENCY JOINT EXERCISE OF POWERS AGREEMENT**

BACKGROUND

- A. The City of Sacramento is a member agency of the Sacramento Area Flood Control Agency (SAFCA).
- B. SAFCA is required to obtain permits from the Central Valley Flood Protection Board (CVFPB) to construct, operate, and maintain flood control improvements. As a condition of receiving such permits, SAFCA must agree to operate and maintain the improvements and/or indemnify the State for liabilities arising from SAFCA's design, construction, operation, or maintenance of the improvements (collectively referred to as "project commitments").
- C. The CVFPB recently adopted a policy to require assurances from joint powers agencies, such as SAFCA, that these obligations will be met, even if the joint powers agency were to be dissolved. To address this new CVFPB requirement, SAFCA has requested that its member agencies approve an amendment to the SAFCA Joint Exercise of Powers Agreement.
- D. The proposed amendment provides that the Joint Exercise of Powers Agreement cannot be terminated, nor may a member agency withdraw, so long as there are outstanding project commitments, unless the relevant member or members provide reasonable written assurances to the CVFPB regarding the outstanding project commitments.
- E. Approval of the proposed amendment is intended to satisfy the provisions of the CVFPB policy, so that SAFCA is able to obtain the CVFPB approvals needed for continued implementation of SAFCA's Natomas Levee Improvement Program.

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

- Section 1. The City Manager is authorized to execute the attached First Amendment to Joint Exercise of Powers Agreement for the Sacramento Area Flood Control Agency.
- Section 2. Exhibit A is part of this Resolution.

Table of Contents:

- Exhibit A: First Amendment to Joint Exercise of Powers Agreement

SACRAMENTO AREA FLOOD CONTROL AGENCY

**FIRST AMENDMENT TO
JOINT EXERCISE OF POWERS AGREEMENT**

This First Amendment to Agreement is made and entered into as of the _____ day of _____ 2010, by and between the following agencies:

- a. City of Sacramento hereinafter referred to as “City”;
- b. County of Sacramento hereinafter referred to as “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”; and
- g. Sutter County Water Agency hereinafter referred to s as “Sutter Water Agency”.

RECITALS

WHEREAS, the Parties to this First Amendment entered into a Joint Exercise of Powers Agreement dated January 17, 1991, hereinafter referred to as “Agreement”, which created the Sacramento Area Flood Control Agency, hereinafter referred to as “SAFCA”, for the coordinated planning and for coordinated and regional efforts to finance, provide and maintain Facilities and Works for the control of waters within or flowing into the boundaries of the Parties and for the protection of public and private property within said boundaries; and

WHEREAS, the construction of said Facilities and Works requires permitting by the Central Valley Flood Protection Board, hereinafter referred to as “CVFPB”, a board of the State of California; and

WHEREAS, the CVFPB is requiring that SAFCA will not be dissolved so long as SAFCA has made outstanding commitments to the CVFPB for operations and maintenance and operations and maintenance indemnification of Facilities and Works.

NOW, THEREFORE, the Parties agree as follows:

1. Section 47 shall be added to the Agreement to read as follows:

“Section 47. Project Commitments made to State of California. (a) For purposes of this Section, “Project Commitments” shall mean agreements between the Agency and the Central Valley Flood Protection Board or any successor entity (collectively “CVFPB”) to: (i) operate and maintain flood control works within the boundaries of the Agency, (ii) indemnify the State of California for liabilities arising out of such operation and maintenance or the failure to conduct same; and/or (iii) indemnify the State of California for design or construction of flood control improvements designed or constructed by the Agency.

(b) Notwithstanding the provisions of Section 40, this Agreement may not be rescinded or terminated or the Agency formed hereby dissolved so long as the Agency has outstanding Project Commitments unless the relevant member or members of the Agency first provide such reasonable written assurances regarding the Project Commitments as the CVFPB may request.

(c) Notwithstanding the provisions of Section 42, no Party to this Agreement may withdraw from the Agreement so long as the Agency has outstanding Project Commitments, unless such withdrawing party first provides such reasonable written assurances regarding the Project Commitments as the CVFPB may request.”

2. All other provisions of the Agreement shall remain in full force and effect.

3. Capitalized terms in this First Amendment shall have the definitions as set forth in the Agreement.

4. This First Amendment may be executed in duplicate counterparts. The First Amendment shall be deemed executed when it has been signed by all of the Parties.

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

CITY OF SACRAMENTO

COUNTY OF SACRAMENTO

By: _____
City Manager

By: _____
Chair of the Board

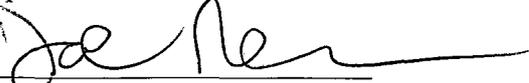
Attest:

City Clerk

Attest:

Clerk of the Board

Approved as to form:



City Attorney

Approved as to form:

County Counsel

RECLAMATION DISTRICT 1000

SACRAMENTO COUNTY WATER
AGENCY

By: _____
Chair

By: _____
Chair

Attest:

Attest:

Secretary

Clerk of the Agency

Approved as to form:

Approved as to form:

District Counsel

Agency Counsel

AMERICAN RIVER FLOOD CONTROL
DISTRICT

SUTTER COUNTY WATER
AGENCY

By: _____
Chair

By: _____
Chair

Attest:

Attest:

Secretary

Clerk of the Agency

Approved as to form:

Approved as to form:

District Counsel

Agency Counsel

SUTTER COUNTY

By: _____
Chair of the Board

Amendment to SAFCA
Joint Exercise of Powers Agreement

August 31, 2010

Attest:

Clerk of the Board

Approved as to form:

County Counsel