

# RESOLUTION NO. 2011-029

Adopted by the Sacramento City Council

January 18, 2011

## AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND RECLAMATION DISTRICT 1000 FOR FLOOD EMERGENCY RESPONSE SERVICES AND MUTUAL AID

### BACKGROUND

- A. The City of Sacramento (City) is responsible for the operation and maintenance of certain urban storm water drainage facilities including storm drains, storm water detention basins and storm water pumping plants that provide vital flood protection for City residents and others.
- B. Reclamation District 1000 (RD-1000) is responsible for the operation and maintenance of the Natomas Perimeter Levee System and certain interior drainage facilities that also provide vital flood protection for City residents and others.
- C. It is to the mutual benefit of both RD-1000 and the City to pool their resources in the event of an emergency in an area that is dependent upon the flood protection provided by levees.
- D. Staff from the Department of Utilities (DOU) and RD-1000 has developed an agreement for flood emergency response services and mutual aid that may be provided or received by both agencies.

### 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 Flood Emergency Response Services and Mutual Aid Agreement with the Reclamation District 1000.
- Section 2. The agreement described in Section 1 is attached as Exhibit A and made a part of this Resolution.

**Table of Contents:**

Exhibit A: Flood Emergency Response Services and Mutual Aid Agreement between Reclamation District No. 1000 and the City of Sacramento

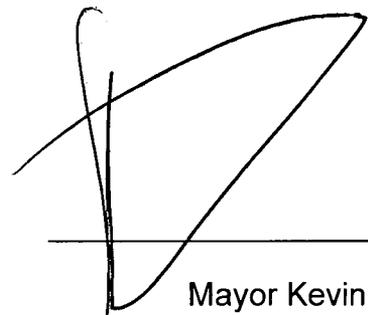
Adopted by the City of Sacramento City Council on January 18, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**FLOOD EMERGENCY RESPONSE SERVICES AND MUTUAL AID  
AGREEMENT BETWEEN  
RECLAMATION DISTRICT NO. 1000 AND THE CITY OF SACRAMENTO**

**THIS AGREEMENT** is entered into on \_\_\_\_\_, 2011 by and between the **CITY OF SACRAMENTO**, a charter city (“CITY”) and the **RECLAMATION DISTRICT NO. 1000** (“RD1000”), a public entity of the State of California formed by special act of the California Legislature. The CITY and RD 1000 are each sometimes referred to herein as a “party” and are sometimes collectively referred to as the “parties.”

**RECITALS**

WHEREAS, among other functions, RD1000 has primary responsibility for the operation and maintenance of: (1) certain flood control levees which surround and protect the Natomas basin including a portion of the CITY, including levees along portions of the American River and Sacramento Rivers, Natomas East Main Drain Canal (west levee), Pleasant Grove Creek Canal and Natomas Cross Canal (south levee) (the Perimeter Levee System); and (2) a significant interior stormwater drainage system including canals, levees and pumping stations that collect and discharge rainfall and runoff from properties in the Natomas basin including a portion of the CITY (the Interior Drainage Facilities); and

WHEREAS, the CITY also has primary responsibility for the operation and maintenance of certain urban stormwater drainage facilities including storm drains, stormwater detention basins and stormwater pumping plants (the Urban Drainage Facilities); and

WHEREAS, the Perimeter Levee System and Interior Drainage Facilities operated and maintained by RD 1000 and the Urban Drainage Facilities operated and maintained by the CITY provide vital flood protection for CITY residents and others, and it is in the CITY’s and RD1000’s best interests to cooperate on emergency operations where feasible; and

WHEREAS, RD1000 has requested that the CITY provide the services of CITY employees and/or CITY equipment to assist in patrolling, monitoring and in conducting emergency operations on the Perimeter Levee System and Interior Drainage Facilities during periods of high flood flows, significant storm events or other emergency; and

WHEREAS, the CITY is willing to provide such services to assist in RD1000’s emergency flood protection efforts, subject to certain terms and conditions; and

WHEREAS, RD1000 also is willing to provide CITY the services of RD1000 equipment and employees to support operations of the CITY’s Urban Drainage System during periods of high flood flows, significant storm events or other emergency if requested by the CITY, subject to certain terms and conditions; and

WHEREAS, the parties are entering into this Agreement to establish the terms and conditions for the provision of such emergency operation services by CITY and RD1000.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. TERM

This Agreement will become effective as of the date of execution by both parties and will continue until terminated by either party. Either party may terminate this Agreement with or without cause by giving written notice of termination to the other party specifying a termination date not less than sixty (60) days after the date of such notice, provided, however, that neither party may specify a termination date occurring during a period between October 1 and April 1 of each year.

2. ALLOCATION OF FLOOD RESPONSE SERVICES

During a Flood Emergency Period, as defined below, the CITY and RD1000 will provide the services of the CITY and RD1000 employees for levee patrol and monitoring in the accordance with the Flood Response Plan attached hereto as Exhibit A, subject to any staffing limitations and so long as the allocation of these resources does not compromise the public safety obligations of their respective organizations; and provided, further, that upon mutual agreement of the Director of Utilities for the CITY and the General Manager for the RD1000, or their authorized designees, the provisions of the Flood Response Plan may be changed for the duration of any Flood Emergency Period. Such changes will not be considered a modification of this Agreement subject to the provisions of Section 13, below. As used in this Agreement, "Flood Emergency Period" shall mean such time period as may be jointly determined to constitute a Flood Emergency Period by the Director of Utilities for the CITY and the General Manager for the RD1000, or their designees, based on existing or anticipated storm events or other conditions on any of the rivers and streams surrounding the Natomas Basin, or interior canals and drainage facilities within the Natomas Basin.

3. RESPONSIBILITY FOR EMPLOYEES PERFORMING LEVEE SERVICES

- A. RD1000 will be responsible for directing the performance of levee patrol and monitoring services provided by RD1000 and CITY employees in accordance with the Flood Response Plan (as modified by mutual agreement, if applicable) during a Flood Emergency Period.
- B. RD1000 will defend, hold harmless and indemnify the CITY, its officers and employees against any claim, action, damage, loss, cost (including reasonable attorney fees) or other liability (hereafter collectively referred to as "Liabilities"), including without limitation Liabilities for workers compensation, arising from any acts or omissions by RD1000 officers or

employees or CITY employees during the performance of levee patrol and monitoring or other emergency services as directed by RD1000 under this Agreement. The foregoing Liabilities will include claims that may be made against CITY by any CITY or RD1000 officer or employee or by any third party, including but not limited to claims made by any state or federal agency. Each party will remain solely responsible for Liabilities arising from the acts or omissions of their respective officers and employees that do not occur during the performance of services under this Agreement. The parties' obligations under this Section 3.B. will survive any termination of this Agreement.

#### 4. PROVISION OF EQUIPMENT AND MATERIALS

- A. In addition to the performance of levee patrol and monitoring services as specified in Sections 2 and 3, above, during a Flood Emergency Period each party may request that the other party provide equipment, equipment operators and/or materials to be utilized by the requesting party for flood control purposes. The party receiving such request (hereafter referred to as the "providing party") will provide such equipment, equipment operators and/or materials to the extent that the providing party determines that (i) the equipment, equipment operators and/or materials are available, and (ii) providing the equipment, equipment operators and/or materials to the requesting party will not jeopardize public safety. These determinations will be made by the CITY and RD1000 by the CITY Director of Utilities and the RD1000 General Manager, respectively, or their authorized designees. Unless otherwise agreed by the providing party, the equipment provided shall be only operated by qualified employees of the providing party. The party requesting equipment and equipment operators will be responsible for directing the providing party's employees' operation of the equipment during a Flood Emergency Period.
- B. The party requesting equipment and equipment operators will defend, hold harmless and indemnify the providing party, its officers and employees against any claim, action, damage, loss, cost (including reasonable attorney fees) or other liability (hereafter collectively referred to as "Claims"), including without limitation Claims for workers compensation, arising from any acts or omissions by the providing party's employees within the course and scope of their employment during their operation of such equipment during a Flood Emergency Period. The foregoing Claims will include claims that may be made by any such employees or by any third party, including but not limited to claims made by any state or federal agency. Each party will remain solely responsible for Claims arising from acts or omissions of their respective officers and employees that do not occur during the performance of services under this Agreement. The parties' obligations under this Section 4.B. will survive any termination of this Agreement.

5. REIMBURSEMENT OF COSTS

On a monthly basis, each party (the “providing party”) that provides employee services, equipment and/or materials to the other party under this Agreement will provide the other party with a written invoice for: (a) the total amount of all wages and benefits paid to its employees for the performance of such services (including overtime paid in accordance with applicable laws and regulations); (b) any costs reasonably incurred by the providing party to provide the equipment and/or materials; and (c) the reasonable cost to repair or replace any such equipment and/or material that is damaged or otherwise consumed or exhausted during its use by the other party. Each such invoice will identify the providing party’s employee(s) performing services under this Agreement, the amount of time spent performing such services by each employee, and the total amount due for each employee. The party receiving such an invoice will pay the invoice not later than sixty (60) days after receipt. Prior to November 1 of each year, each party will provide the other party with written notification of the current hourly wage rates and benefit costs for the employees that may be assigned to services under this Agreement. If any of this information changes after November 1, the party for which information changes will promptly notify the other party of such changes in writing. If this Agreement is terminated by either party, each party will pay the other, as provided herein, for costs incurred prior to the effective date of termination. To that end, the parties’ obligations under this Section 5 will survive any termination of this Agreement.

6. REPORTS TO FLOOD OPERATIONS CENTER

The RD1000 will ensure that levee conditions observed by RD1000 and/or CITY employees performing levee patrol and monitoring services under this Agreement during a Flood Emergency Period are reported regularly to the CITY’s Flood Operations Center at least every two (2) hours and reported more frequently as conditions warrant. RD1000 will also report significant developments to the CITY’s Flood Operations Center as soon as possible under the circumstances at the time.

7. LIABILITY

Except as otherwise provided in Sections 3 and 4, above, each party, as indemnitor, will defend, hold harmless and indemnify the other party, its officers and employees, against any claim, action, damage, loss, cost (including reasonable attorney fees) or other liability arising from any negligent or wrongful act or omission of the indemnitor, its officers or employees occurring in the performance of this Agreement. The provisions of this Section 7 will survive any termination of this Agreement.

8. NOTICE

Notices and other communications will be directed to the parties at the addresses shown below. A party may change its persons designated to receive notice, its telecopy number, or its addresses from time to time by giving notice to the other party in accordance with the procedures set forth in Section 8.

TO CITY:                    Director of Utilities  
                                  City of Sacramento  
                                  1395 35<sup>th</sup> Street  
                                  Sacramento, CA 95822  
                                  Telephone: (916) 808-1407  
                                  Facsimile: (916) 808-1497  
                                  Email: mhanneman@cityofsacramento.org

TO RD1000:                General Manager  
                                  Reclamation District Number 1000  
                                  1633 Garden Highway  
                                  Sacramento, CA 95833  
                                  Telephone: (916) 922-1449  
                                  Facsimile: (916) 922-2129  
                                  Email: pdevereux@rd1000.org

Given the nature of this Agreement and the emergency circumstances under which its provisions will likely to be invoked, unless otherwise provided in this Agreement, communications pursuant to this Agreement may be telephone or e-mail between the designated representatives of the CITY and RD1000

9. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement is intended to create, and nothing herein will be considered as creating, any partnership, joint venture, or agency relationship between the CITY and RD1000. Neither party will have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party will have any authority, express or implied, pursuant to this Agreement to bind the other party to any obligation whatsoever.

10. INSURANCE

During the duration of this Agreement, RD1000 will maintain in full force and effect at the RD1000's own cost and expense, the following insurance coverage: Worker's Compensation coverage as required by State law, and General Liability and Auto Liability Insurance covering bodily injury and property damage. The General Liability and Auto Liability policies shall provide coverage for liabilities arising from the operation or maintenance of the levees or any levee patrol,

monitoring or other services performed or provided under this Agreement, of at least **One Million Dollars (\$1,000,000.00)** per occurrence for the General Liability policy and at least **One Million Dollars (\$1,000,000.00)** combined single limit per occurrence for the Auto Liability policy. The policy shall be issued by an admitted insurer as defined by the California Insurance Code [with an AM Best rating of VII or greater], and will name CITY, its officers and employees as additional insureds under the policies. RD1000 will file a Certificate of Insurance and policy endorsements verifying the coverages required herein with CITY's Division of Risk Management prior to the CITY's approval of this Agreement. Each policy will provide that no cancellation, change in coverage, or expiration may be effected by the insurance carrier without first giving written notice to the CITY thirty (30) calendar days prior to the effective date of such cancellation, change in coverage, or expiration of policy. The RD1000 may satisfy the provisions of this Section 10, in whole or in part, by providing suitable evidence of self-insurance, if approved by the CITY's Division of Risk Management. Notwithstanding any other provision of this Agreement to the contrary, the CITY may terminate this Agreement without prior notice at any time for failure to maintain any item of the required insurance. The CITY shall provide evidence of self-insurance to RD1000.

#### 11. ATTORNEY FEES

Should suit be brought by either party to enforce or interpret the provisions of this Agreement, the substantially prevailing party in such action shall be entitled to an award of its reasonable attorney's fees and court costs by the court, in addition to any other relief to which such party may be entitled.

#### 12. COMPLIANCE WITH LAWS AND REGULATIONS

Each party will comply with all applicable Federal, State and Local laws, ordinances, rules and regulations pertaining to the performance of its obligations under this Agreement.

#### 13. MODIFICATION

No waiver, alteration, modification, or termination of this Agreement will be valid unless made in writing and approved by the legislative bodies of both parties.

#### 14. AMBIGUITIES

The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity will be presumed to be constructed against either party.

15. WAIVER

Waiver by either party of any default, breach or condition precedent will not be construed as a waiver of any other default, breach or condition precedent or any other right under this Agreement.

16. ENFORCEMENT OF AGREEMENT

This Agreement will be governed, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement will be instituted and maintained in the courts of Sacramento County and the State of California and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. INTEGRATION

This Agreement embodies the entire agreement of the parties in relation to the services herein described, and no other agreement or understanding, verbal or otherwise, exists between the parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first appearing above.

**CITY OF SACRAMENTO**

**RECLAMATION DISTRICT NO.  
1000**

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
District Counsel

Attest:

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

## EXHIBIT A

### Flood Response Plan

1. The following table provides a guide on the number of employees to be provided by the CITY to RD1000 for levee patrol and monitoring assistance based on the anticipated stages on the Perimeter Levee System and/or anticipated stages on the Interior Drainage Facilities subject to the limitations described in Section 2 and Section 4 of the Agreement. The number of CITY employees assigned to RD1000 as described below, may be changed by mutual agreement of the CITY's Director of Utilities and the RD1000 General Manager or their authorized designees.

<u>Projected Sacramento River I Street Stage</u>	<u>Number of CITY Employees</u>
27.0	2
29.0	3
31.0	4
32.0	6

RD 1000 may also request levee patrol and monitoring assistance along its Interior Drainage Facilities based on a combination of forecast precipitation, antecedent moisture conditions, levels in CITY detention basins, current canal levels and status of power availability and pumping plants within RD 1000's jurisdiction. The number of such CITY employees assigned to the RD1000 shall be mutually agreed to by the CITY's Director of Utilities and the RD1000 General Manager or their authorized designees, subject to the limitations described in Section 2 and Section 4 of the Agreement.

2. In addition to the above, during a Flood Emergency Period, subject to the limitations described in Section 2 and Section 4 of the Agreement, the CITY may assign from one to four CITY employees with flood control fight background and training, as may be agreed between the Director of Utilities for the CITY and the General Manager for the RD1000, or their authorized designees, to perform monitoring for the RD 1000 of identified levee problems, such as boils, seepage, sloughing or other levee stability problems. The CITY shall provide a list of potential candidates to RD1000 in writing prior to each November 1.
3. All CITY employees assigned to perform services for RD1000 will have completed the flood fight training course provided by the State Department of Water Resources, or an equivalent class, and all CITY employees assigned to

perform levee patrols during a Flood Emergency Period will have levee-related experience.

4. CITY employees assigned to perform services for RD1000 hereunder will perform levee patrol or levee monitoring services as directed by the General Manager for the RD1000, or his/her authorized designee. RD 1000 will assign two-person levee patrol teams, consisting of one CITY employee and one RD1000 employee, if feasible, to perform levee patrols for 12 hour shifts.
5. Levee patrol vehicles, whether provided by the CITY or the RD1000, will be equipped with cellular phones and appropriate safety equipment.
6. The CITY will be solely responsible for designating which CITY employees are assigned to perform services for RD1000, and for which shifts, during a Flood Emergency Period, consistent with the qualifications specified in item 3, above.