



**Sutter Butte Flood Control Agency**

1227 Bridge Street, Suite C  
Yuba City, CA 95991  
(530) 870-4425  
sutterbutteflood.org

**Counties**

Butte County  
Sutter County

**Cities**

City of Biggs  
City of Gridley  
City of Live Oak  
City of Yuba City

**Levee Districts**

Levee District 1  
Levee District 9

**ENDORSED FILED**

**SEP 27 2012**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF BUTTE  
CLERK OF THE COURT  
By JACKIE LASWELL Deputy

July 6, 2012

The Honorable Christopher R. Chandler  
Presiding Judge of Superior Court of California  
County of Sutter  
446 Second Street  
Yuba City, CA 95991

Dear Judge Chandler:

On behalf of the Sutter Butte Flood Control Agency, I respectfully submit the following response to the findings and recommendations of the Sutter County Grand Jury as detailed in its 2011-2012 Final Report.

The Agency appreciates the service of the Grand Jurors and their interest in the Agency's mission and activities. We welcome an opportunity to meet with the Grand Jury to discuss the Agency's response and clarify some misunderstandings contained in the material content of the report. To this end, we have attached an addendum to address those factual inaccuracies.

Thank you for the opportunity to respond, and please let us know if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Inamine".

Mike Inamine  
Executive Director

Attachments (8)

**Sutter Butte Flood Control Agency  
Response to the Sutter County Grand Jury  
2011-2012 Final Report  
- Attachment 1**



**Sutter Butte Flood Control Agency**  
**Response to the Sutter County Grand Jury 2011-2012 Final Report –**  
**July 6, 2012**

**FINDINGS**

**F1.** During the public outreach meetings there were concerns for the right-of-way easements, property owners had not been approached by SBFCA prior to testing being done on their property.

**Response**

The respondent agrees that there is concern for project right-of-way impacts, and the Agency has continued to meet and communicate with landowners to address this concern. The respondent also agrees that a single property owner voiced concerned that levee vegetation survey activities were being conducted without advanced notification. However, these visual surveys were conducted from the top of the levee, not in the landowners' backyards. The respondent wholly disagrees that property owners were not contacted prior to right-of-way activities being conducted on their properties, as right-of-entry agreements were authorized by property owners prior to the commencement of work. Moreover, the respondent conducted small group meetings with property owners to address specific concerns and to alert property owners of upcoming activities. These meetings took place in December 2011 and January 2012.

**F2.** The ED's resignation has put additional responsibilities on the interim ED and SBFCA staff. To date the position has not been filled.

**Response**

The respondent agrees that a full-time Executive Director and a full-time Director of Engineering are needed to effectively manage increasing workloads related to project planning, engineering, environmental permitting, construction, state and government regulations, as well as Agency operations. In January 2012, SBFCA's then-Executive Director Bill Edgar was appointed to the Central Valley Flood Protection Board by Governor Brown. This appointment necessitated his resignation from SBFCA, since the Central Valley Flood Protection Board regulates the planning, design, construction, operation and maintenance of flood protection projects such as those currently being undertaken by SBFCA. Director of Engineering Mike Inamine was named Acting Executive Director and assumed the duties of both positions, pending the Board's decision on permanent staffing. At the May 2012 SBFCA Board meeting, Mr. Inamine was appointed Interim Executive Director, and the Agency subsequently conducted a recruitment and interview process for a Director of Engineering to replace Mr. Inamine. At the June 2012 SBFCA Board meeting, Mr. Inamine was appointed Executive Director and authorized to negotiate an employment contract with the preferred candidate for the Director of Engineering position. Those negotiations are underway, but a contract has not yet been finalized. SBFCA expects a full-time Director of Engineering to be under contract by the end of July 2012.

**F3.** SCBOS approved funds to be moved from the Flood Control Fund for purposes other than flood control.

**Response**

The Agency is unclear as to why an action of the Sutter County Board of Supervisors is included in the Grand Jury's report. SBFCA is a joint powers authority of which Sutter County is a member. However, Sutter County is a governmental organization independent of SBFCA and with distinct and separate responsibilities, governance and policies.

Regardless, SBFCA wholly disagrees with the finding. While SBFCA has no influence or bearing on the administration or governance of the Sutter County Board of Supervisors, the respondent believes that, based on publicly available information, the transfer of funds by Sutter County referenced in the SCGJ report was both allowable and prudent.

First, the source of the County funds is a grant from Calpine for the purposes of flood and drainage control activities. Those funds are to be allocated at the discretion of the Board of Supervisors after consultation with Calpine. Second, the expenditure directly relates to the County's responsibility for overall flood control, which includes activities related to the mapping of County floodplains by the Federal Emergency Management Agency (FEMA) for the purposes of assessing risk and rating flood insurance.

**F4.** Annual audit findings show deficiencies including lack of certain policies. Additionally, liability insurance coverage has not been in place since SBFCA's inception.

**Response**

The respondent agrees that the auditor recommended the Agency, which at the time of the report had only recently hired its first full-time employee, put into place some additional labor policies to govern employee computer use, purchasing, and fraud reporting. A disaster recovery plan for the office was also recommended. With regard to liability insurance, the audit report states, "During our audit, we noted that there was not liability insurance in place from the Agency's inception to June 30, 2008." SBFCA was formed in September 2007 and purchased a liability insurance policy that took effect July 1, 2008. The policy was purchased after all Agency formation documents had been finalized and as soon as the policy could be negotiated. Liability insurance has been consistently maintained since that time (documentation of the original purchase is attached). Also, all SBFCA contractors are required to carry liability insurance covering their activities with the Agency.

It is important to note that the auditor gave the Agency a "clean" audit report. As reported in the February 8, 2012 SBFCA Board Meeting minutes, the Agency Treasurer and Chief Financial Officer for the City of Yuba City stated that the unqualified report is the best and highest report an agency can receive. Two separate audits, one for three fiscal years preceding the formation of the Agency's assessment district (2008-2010) and another for the fiscal year ending June 30, 2011, were conducted by the accounting firm Moss, Levy & Hartzheim, LLP. According to the audit reports, the Agency successfully demonstrated its compliance with sound governmental accounting practices and conformity with generally accepted accounting principles. As importantly, the auditors did not identify any material weaknesses in the Agency's internal financial controls.

## **RECOMMENDATIONS**

**R1.** Landowners need notification prior to any levee work being done on or near their property.

### **Response**

This recommendation was implemented and is an ongoing activity. SBFCA conducts a comprehensive public outreach program to coordinate communications on all project-related activities that impact property owners adjacent to the levees. SBFCA makes every attempt to contact impacted property owners prior to any project-related work. To ensure easy identification, the Agency also requires that all contractors wear high-visibility SBFCA vests while working on or near levees. Contact with property owners is attempted via direct communication through mailings, small group meetings, and by phone and email, when such contact information is available. Examples of letters sent to property owners are attached.

**R2.** SBFCA needs to actively look for a permanent Executive Director.

### **Response**

This recommendation was implemented. Mr. Mike Inamine, the Agency's Director of Engineering, was named Executive Director on June 13, 2012. However, a full-time Director of Engineering is also needed to relieve the Executive Director from the increasing workload and responsibilities of both positions. Toward that end, the Agency recently conducted a recruitment and interview process for a Director of Engineering to replace Mr. Inamine. On June 13, 2012, the Board authorized the Executive Director to negotiate an employment contract with the preferred candidate for the Director of Engineering position. Those negotiations are underway, but a contract has not yet been finalized. SBFCA expects a full-time Director of Engineering to be under contract by the end of July 2012.

**R3.** SBFCA and the SCBOS should carefully consider use of designated Flood Control Funds for purposes other than flood control or levee repairs.

### **Response**

As a special purpose agency, SBFCA may only use funds for the purpose for which they are raised. The SBFCA Board scrutinizes and votes on every project-related task order to ensure authorized activities are directly tied to the ability of the Agency to construct levee repairs and improvements. However, not all such activities are directly related to the physical task of repairing levees. For example, both an emergency response plan and an operations and maintenance plan are required to obtain State funding for levee repairs and improvements; both require institutional changes and funding. Since Hurricane Katrina in 2005, the state and federal regulatory environment has been highly dynamic; in addition, funding requirements and administrative policies are also rapidly changing. These factors present tremendous challenges and cost escalation if not properly managed. Against this backdrop of evolving regulations and policies, the complex issues of design, construction and project management are relatively straightforward in comparison. Without the Agency's direct and proactive involvement in policy and regulatory issues, the project cannot be constructed.

**R4.** SBFCA should carry liability insurance and continue the process of developing and implementing the policies recommended in the Audit findings.

### **Response**

This recommendation was implemented.

On February 8, 2012, the Board received audited financial statements covering all prior years of the Agency's operations and a management report on the internal controls of the Agency prepared by the independent audit firm Moss, Levy and Hartzheim, LLP. In the management report, the

auditor noted that the Agency did not have liability insurance coverage from its inception in late 2007 through June 2008, and recommended that the Agency “have sufficient insurance coverage at all times.” The report also stated that the agency purchased liability insurance that took effect in July 2008, a coverage that has continuously been maintained since that time (document attached).

Given the Agency’s recent hiring of its first full-time employee, the auditor also recommended the Agency implement seven policies covering:

1. Capital assets
2. Fraud reporting
3. Purchasing policy
4. Computer use
5. Disaster recovery plan
6. Drug free workplace
7. Labor regulation policies associated with grants

Of the seven recommended policies, two, Computer Use and Drug Free Workplace, were immediately developed and incorporated into the Agency’s employee handbook. The handbook was initially developed in June 2012 in preparation of hiring the Agency’s first full-time Director of Engineering. One recommended policy, Labor Regulation, is needed only in the event it is required by grant conditions and requirements. None of the Agency’s current grants require such a policy at this time. The remaining four policies – Capital assets; Fraud reporting; Purchasing; and Disaster recovery plan (hereby referred to as a Business Disaster Resumption & Preparedness Plan) – were developed and adopted by the Board on May 9, 2012. The policies and Staff Report are included in the Appendices.

## CORRECTIONS TO THE SUTTER COUNTY GRAND JURY REPORT

The SCGJ's report on the Sutter Butte Flood Control Agency contained a number of inaccuracies. The bolded text on the left is the incorrect information published in the SCGJ report. The column to the right provides the necessary corrections or clarifications.

Page	Text of Grand Jury Report	Correction
27	The <b>Sutter Buttes Flood Control Agency (SBFCA)</b> is responsible for repairing and upgrading levees along the west bank of the Feather River, from the Thermalito Afterbay south to the Sutter Bypass, a total of 44 miles. Repairs are necessary because the Feather River west levees do not provide 100-year flood protection, a requirement of the Federal Emergency Management Agency (FEMA) or 200-year flood protection, <b>a new state requirement for areas with more than 100,000 residents.</b>	The correct name is the "Sutter Butte Flood Control Agency."  The state requirement is for those areas with 10,000 or more residents, or those with plans to grow to 10,000 or more residents.
27	The 2011-2012 Sutter County Grand Jury (SCGJ) visited the SBFCA office for an informational meeting to learn about the Feather River West Levee Project I (Project). The SCGJ learned that this is a long term project that requires oversight from the community. SCGJ recommends SBFCA do more public outreach and <b>Citizen's Oversight committee</b> meetings throughout the entire project.	A "Citizen's Oversight committee" does not exist. There is a Citizens Assessment District Advisory Committee. According to its charter, that Committee's purpose is to review the expenditure of funds generated by SBFCA's annual assessments and advise the Board on its findings. The Citizen's Assessment District Advisory Committee made a decision to meet at least four times per year.
27	The SBFCA board members are placing too high an emphasis on a FEMA Agricultural Zone Coalition. More emphasis should be placed on the <b>U.S. Corps of Engineers (COE)</b> Feasibility Study, the <b>California Environmental Study</b> , state and federal construction permits, and temporary and permanent right-of-ways.	The full name is U.S. Army Corps of Engineers.  A "California Environmental Study" does not exist. Based on requirements of the California Environmental Quality Act and the National Environmental Policy Act, the Agency is jointly conducting an Environmental Impact Report/Study with the U.S. Army Corps of Engineers as part of the Corps Feasibility Study. Separately, SBFCA and the Corps are jointly preparing an Environmental Impact Report/Study for environmental permits that must be acquired prior to any construction on SBFCA's Feather River West Levee Project.
27	The official <b>Joint Powers Association (JPA)</b> for SBFCA formed in 2007 by Butte and Sutter	SBFCA is a Joint Powers Agency, formed through a joint powers agreement of the

	<p>counties, Yuba City, Live Oak, Biggs, Gridley, and Levee Districts #1 and #9 for <b>maintenance and rehabilitation of the Project</b>.</p> <p>In June 2010, a <b>ballot measure</b> was passed allowing SBFCA to assess properties to share the cost for the construction of the levee rehabilitation.</p>	<p>member agencies. The Agency's purpose is to improve flood protection within the Agency's boundaries. It does not maintain levees.</p> <p>It was not a ballot measure open to all voters. In accordance with Proposition 218, owners of property within the proposed assessment district boundaries were issued ballots by mail.</p>
28	<p>On November 7, 2011, the SCGJ attended a meeting with SBFCA staff including the Executive Director (ED), <b>General Counsel (GC)</b>, Director of Engineering (DOE), <b>Certified Public Accountant (CPA)</b> and Public Outreach Coordinator (POC) to discuss the levee improvement project. The meeting was held at their office located at 1227 Bridge Street, Suite C, Yuba City, CA. We learned that the staff is comprised of Independent Contractors except for the DOE, their first employee, <b>who has had 30 years experience working for the California Department of Water Resources (DWR)</b>. The SCGJ viewed a Power Point presentation ahead of the Public Outreach meetings to be held later that week.</p>	<p>The Agency's General Counsel did not attend this meeting. The Agency's Budget Manager, not its Certified Public Accountant, attended the meeting.</p> <p>Mike Inamine, then-Director of Engineering (now SBFCA's Executive Director) has more than 30 years of experience in water resources and civil engineering. He was formerly employed by the Department of Water Resources.</p>
28	<p>The Project is expected to increase public safety by providing 200-year flood protection to Biggs, Gridley, Live Oak, and Yuba City, and improve flood protection for the less populated area south of Yuba City. In addition, <b>the goal of SBFCA is to save Live Oak and Yuba City property owners from being mapped into FEMA Special Flood Hazard zones</b>. Delaying the mapping could save tens of millions of dollars each year in mandatory flood insurance costs. <b>Without 200-year flood protection, cities and counties would be restricted or not be allowed to implement general plans or to urbanize</b>. The Project will allow property owners to maintain their rights to make improvements without new state or federal land use restrictions. <b>This would not apply to rural communities</b>. This Project could also sustain and grow the local economy by creating construction jobs, protecting property values, and allowing for residential, commercial and industrial development.</p>	<p>One of SBFCA's objectives is to save property owners tens of thousands of dollars each year in mandatory flood insurance costs by preventing or modifying FEMA floodplain mapping within the Agency's boundaries. This extends to all properties within the Agency's boundaries.</p> <p>Without 200-year flood protection, cities and counties would not be allowed to implement general plans or to "urbanize" beyond 10,000 residents.</p> <p>If a rural area does not have at least 100-year flood protection, properties within that area will be subject to mandatory flood insurance requirements and building restrictions.</p>
28	<p><b>As of April 6, 2012, the contribution could not be tracked as being paid.</b></p>	<p>The money is held by Sutter County until needed. Sutter County has agreed to reimburse SBFCA for the costs of this effort, up to</p>



		\$40,000. However, in order to reduce the administrative burden of monthly reimbursement requests, SBFCA will only invoice Sutter County for reimbursements in \$5,000 increments.
28	At the public SBFCA meeting on February 8, 2012, the GC proposed a trip to Washington D.C., <b>to brief decision makers and to discuss the necessary approvals required to proceed with the Project, the COE Feasibility Study, the California Environmental Study and the FEMA Zone for Agriculture.</b>	The purpose of this trip was to educate federal representatives, their staffs, and regulatory offices on SBFCA projects and to establish good relations in the event that problems arise in the future. Among many topics, SBFCA staff discussed project permitting, the Corps Feasibility Study, appropriations, FEMA regulations, the National Flood Insurance Program, federal crediting, levee vegetation policy, and the joint Environmental Impact Report/Study (as discussed above, there is no California Environmental Study).
28	The cost of the COE Feasibility Study has grown from \$2.5 million in 1999 to <b>\$10 million</b> in 2012 and will increase with delays. The study is a requirement for State-Federal Funding. <b>Once the COE Feasibility Study is completed, federal funds may be available for improvements to the portions of the basin not addressed by the Project. If the Project cannot be completed within the existing budget, the COE Feasibility Study remains a vehicle to obtain Federal dollars.</b>	<p>The cost of the Corps Feasibility Study has increased to \$12 million.</p> <p>Once the Corps Feasibility Study is completed and with the approval of Congress, federal funds may be available for improvements in the portion of the basin covered by the study. Those areas may overlap with those covered by the Feather River West Levee Project. The State also requires that SBFCA pursue a federal funding crediting vehicle such as the feasibility study.</p>
30	<p>Information presented at the SBFCA public outreach meeting on November 7, 2011, shows there are <b>34,000 parcels involved in the construction phase of the Project.</b></p> <p>The design phase is now 60 to 65% completed. <b>The southern and northern portions of the assessment district are already mapped by the COE as flood zones.</b> SBFCA is working diligently to keep the metropolitan areas of Yuba City and Live Oak from being mapped by COE as a flood zone. The State is concerned about the growth in rural areas.</p>	<p>There are approximately 34,200 properties within SBFCA's boundaries. The 44-miles of levee repairs have been separated into two separate projects. The Feather River West Levee Project will repair the levee from the Thermalito Afterbay south to Star Bend. A second project to repair the remaining levee from Star Bend south to the Sutter Bypass is in the early planning phase.</p> <p>The Federal Emergency Management Agency, not the U.S. Army Corps of Engineers, is responsible for mapping floodplains. Only portions of the southern and northern areas of the assessment district have been mapped by the FEMA as high-risk flood zones.</p>

	<p><b>The DWR SB5 states that by 2015 the area must have or adequate progress must be made towards completion of 200-year flood protection or the State will stop issuing entitlements.</b></p> <p><b>This includes construction of the slurry walls to begin in 2013 and end in 2015.</b></p>	<p>The California Legislature adopted SB5, not DWR. The law states that any area with 10,000 or more residents, or plans to grow to 10,000 or more residents, must make adequate progress toward 200-year flood protection by 2015. If adequate progress is not made, local land use authorities will be prohibited from issuing entitlements (the state does not issue entitlements). Further, 200-year flood protection must be in place by 2025, or the local land use authority may no longer issue entitlements.</p> <p>SBFCA's Feather River West Levee Project will provide 200-year flood protection for the urban and urbanizing areas of Yuba City, Live Oak, Biggs and Gridley.</p>
30	<p>These expenditures include mandatory flood insurance in addition to <b>flood assessment taxes.</b></p>	<p>Assessments are not taxes. An assessment is a charge on a property for the benefit it receives from an improvement. In this case, properties will receive a benefit from a reduction in potential flood damages.</p>
30	<p>The Sutter Bypass and the Wadsworth Canal are owned by DWR <b>and they are competing with SBFCA for grant funding.</b></p> <p><b>The southern portion of the county will not have 200-year flood protection until the Bypass is rehabilitated.</b></p> <p>Through an accelerated COE Feasibility Study, the <b>Central Valley Flood Protection Agency (CVFCA) may get funding for their Bypass project before SBFCA gets funding for their Project.</b></p>	<p>SBFCA does not compete with DWR for funding, as DWR is the grantor of funds for the State's cost share of levee projects. However, there are limited funds available for levee improvements and repairs. In that sense, all projects compete for State funding.</p> <p>The southern portion of the Basin is not proposed to ever have 200-year protection. The County's General Plan calls for it to remain in agriculture, which does not require such a high level of financial investment. SBFCA has planned 100-year flood protection for that area, and is also working on a FEMA Ag Zone that would lessen restrictions on and lower flood insurance costs for agricultural operations, in the interim or in the event that less than 100-year flood protection is implemented.</p> <p>SBFCA is not competing with the Central Valley Flood Protection Board (CVFPB, not CVFCA) for federal funds for levee improvements. The Corps Feasibility Study is</p>



	<p>evaluating alternatives for improving flood protection in the Butte Sutter Basin. If the Corps determines there is a federal interest in projects to improve flood protection and if approved by Congress, federal dollars may at some point become available to provide increased levels of flood protection for those areas covered by the study. This may include those areas not addressed by the Feather River West Levee Project and future projects implemented by SBFCA.</p> <p><b>An Early Implementation Project (EIP) Grant has already been issued by the State for the design phase and an environmental study for the Bypass project.</b></p> <p><b>If the right-of-way is funded before construction starts on the Bypass Project, SBFCA moves down the list for funding. SBFCA staff realizes the Bypass needs to be improved, but needs to be done without jeopardizing the Project. The SBFCA has sent a letter to CVFCA stating their concerns to the Plan (Attachment A). Construction can only be done April through October because of the flood season. This project has the potential to dwarf levee projects and will devastate Sutter County. If the Bypass Project is approved there could be a decrease of approximately 65,000 acres of farmland. Also several small communities will be eliminated. This action will limit and shrink growth in Sutter County.</b></p>	<p>A \$9 million state EIP grant was awarded to SBFCA for design and environmental work for SBFCA's Feather River West Levee Project. A bypass project does not exist.</p> <p>This paragraph confuses SBFCA's work with that of the Central Valley Flood Protection Board (CVFPB, not the CVFCA) and its review and adoption of the Central Valley Flood Protection Plan. First, a bypass project does not exist. The draft Central Valley Flood Protection Plan proposed the expansion of the Cherokee Canal (also known as the Feather River Bypass), but that project was removed from the Plan prior its adoption by the Central Valley Flood Protection Board on June 29, 2012. The SBFCA Board provided official comments to the Central Valley Flood Protection Board on many aspects of the draft Plan that had the potential to impact SBFCA's ability to implement the Feather River West Levee Project and improvements south of Star Bend.</p> <p>In relation to right-of-way, if SBFCA purchases right-of-way prior to the completion of the Environmental Impact Report/Study and project permitting, the State may not reimburse SBFCA for those costs.</p>
30	<p><b>Currently, CVFCA requires levees to have 10' easements. In order to meet 200-year protection CVFCA requires between 20' and 100' easements. The "Urban Levee Design Criteria" describes the 200-year protection. Link: <a href="http://www.water.ca.gov/floodsafelleveedesign">http://www.water.ca.gov/floodsafelleveedesign</a>. During the SCBOS meeting dated April 10, 2012 a discussion was held on the CVFCA</b></p>	<p>Easements and right-of-way are not a part of the Central Valley Flood Protection Plan. The SCBOS sent a letter to the Central Valley Flood Protection Board about the draft Central Valley Flood Protection Plan.</p> <p>As described in the Urban Levee Design Criteria, the Department of Water Resources</p>

	<p><b>Plan and several points of objection to the Plan were made by the Sutter County Public Works office. The SCBOS voted to send a letter to CVFCA stating their objections to this plan (Attachment B).</b></p>	<p>(DWR) – not the CVFPB – is responsible for establishing guidelines for right-of-way (including easements) to meet 200-year criteria. SBFCA has negotiated a right-of-way plan with DWR for the Feather River West Levee Project that reduces the amount of right-of-way required in urban, developed areas.</p>
30	<p>Also, the Annual Financial Audit, which includes the Managers Report, <b>was presented and showed significant deficiencies not addressed at the meeting</b> (Attachment C).</p>	<p>In the Management Report, the auditor listed significant deficiencies as the absence of several governance policies that were referenced at the Board meeting and have since been adopted by the Board or incorporated into SBFCA's employee handbook.</p> <p>SBFCA received a "clean" audit report, otherwise known as an unqualified report. As reported in the February 8, 2012, SBFCA Board Meeting minutes, Robin Bertagna, the Agency Treasurer and Chief Financial Officer for the City of Yuba City, stated that the unqualified report is the best and highest report an agency can receive.</p>

**Sutter Butte Flood Control Agency  
Director of Engineering Personnel Action  
- Attachment 2**



# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

## **ANNOUNCEMENT**

The Sutter Butte Flood Control Agency seeks a Director of Engineering who will be responsible for the successful execution of civil engineering work in connection with SBFCA's flood management projects. The position involves planning, leading, scheduling, funding, directing, coordinating and controlling all aspects of the work, including working with regulators, stakeholders and the public. The incumbent also leads key initiatives for regional flood management planning. Working under the general direction of the Executive Director, the Director of Engineering exercises great latitude in the administration of SBFCA's civil engineering work, including effective project management, strategic planning, sensitivity to public policy and fiscal management concerns, and a deep understanding of civil engineering practices. Key specific objectives include (i) project management of design and construction projects; (ii) strategic program administration of civil works projects constructed in cooperation with Federal/State/Local agreements and (iii) representation of SBFCA programs to elected officials, Board members, government agencies, the private sector and the public. Qualified candidates must have at least five (5) years of relevant experience in flood control and/or water resources engineering, a solid understanding of floodplain management, levee design and construction, project management, and experience working with State and federal regulatory agencies. Registration as a Professional Engineer (PE) in the state of California is required. Salary is between \$120,000 and \$180,000 depending on qualifications. Benefit package is provided. Interviews, should they be necessary, will be held on Wednesday, June 6, 2012.

### **Application Information:**

Application content: Applicants must submit an application in either MS Word or Adobe Acrobat format via email consisting of:

- A cover letter
- A resume containing all relevant information
- Three (3) professional references

Deadline for Applications: Applications will be accepted through Thursday, May 31, 2012, 5:00 PM.

Email Address for Applications: [admin@sutterbutteflood.org](mailto:admin@sutterbutteflood.org)

Interviews: If necessary, interviews will be held on Wednesday, June 6, 2012.

Additional Information: More information may be found on the Agency's website at [www.SutterButteFlood.org](http://www.SutterButteFlood.org).

The full job description is posted below.



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

## DIRECTOR OF ENGINEERING JOB DESCRIPTION

Class specifications are only intended to present a descriptive summary of the range of duties and responsibilities associated with specific positions. Therefore, specifications may not include all duties performed by individuals within a classification. In addition, specifications are intended to outline the minimum qualifications necessary for entry into the class and do not necessarily convey the qualifications of incumbents within the position.

### POSITION IDENTIFICATION

- |  |   |
|--|---|
| A) Title:                                      | Director of Engineering   |
| B) Customary work hours:                       | As outlined in Agency schedule  |
| C) Customary work days:                        | Monday-Friday, some weekend work necessary  |
| D) Reports to:                                 | Agency Executive Director   |
| E) Directs the work of:                        | Technical Consultants   |
| F) Educational and/or experience requirements: | A minimum of a bachelor's degree from an accredited program in civil engineering, or related engineering field, and at least five (5) years of relevant experience in flood control and/or water resources engineering, a solid understanding of floodplain management, levee design and construction, project management, and experience working with State and federal regulatory agencies. |

### FAIR LABOR STANDARDS ACT (FLSA) STATUS

Exempt

### POSITION SUMMARY

Under the general direction of the Executive Director, the Director of Engineering is responsible for the successful execution of civil engineering work in support of SBFCA flood management projects. The position involves planning, leading, scheduling, funding, directing, coordinating and controlling all aspects of the work, including coordination with external stakeholders, regulators and the public. The incumbent also leads key initiatives for regional flood management planning.

### DISTINGUISHING CHARACTERISTICS

The Director of Engineering is the highest technical level class at the Agency and exercises great latitude in the administration of SBFCA's civil engineering work, including effective project management, strategic planning, sensitivity to public policy and fiscal management issues, and a deep understanding of civil engineering practice.

### SUPERVISION RECEIVED/EXERCISED

Receives administrative direction from the Executive Director. Exercises direct and indirect oversight over all technical consultants associated with the Agency's project design and construction team; facilitates effective coordination and communication with external stakeholders, regulators and the public.

### ESSENTIAL FUNCTIONS (include, but not limited to the following)

- Effectively manage scope, schedule and budget of design and construction projects.
- Strategic program administration of civil engineering projects constructed in cooperation with federal/State/local agencies pursuant to respective agreements.
- Prepare strategic planning documents including: financing plans, program budgets, schedules, floodplain management plans, and related reports.

1227 Bridge Street, Suite C, Yuba City, CA 95991



# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

- Maintain communication between project teams, regulators, regional stakeholders, and the Executive Director.
- Prepare and implement strategic guidance for regional planning initiatives.
- Knowledge of environmental documentation laws and procedures with respect to project development, necessary permitting processes, technical consultant services and public outreach processes.
- Prepare and administer consultant contracts.
- Prepare and manage cost sharing agreements with Federal and State agencies.

## **WORKING CONDITIONS**

Position requirements include the ability to perform all normal office activities and observe work in the field. Accommodations may be made for otherwise qualified individuals.

## **QUALIFICATIONS (The following are minimal qualifications necessary for entry into the classification)**

### **Education and/or Experience**

- A bachelor's degree from an accredited program in civil engineering, or related engineering field
- At least five (5) years of direct experience managing the design and construction of flood control or other water resources projects
- Working knowledge of flood control system operation and maintenance
- Experience working with State and federal regulatory agencies
- Strategic planning of flood control systems

### **License/Certificate**

- Registration as a Professional Civil Engineer (PE) in the State of California is required.

## **KNOWLEDGE/ABILITIES/SKILLS**

### **Knowledge of**

- Civil design and construction
- Effective project management, including earned value methods
- Current civil engineering practice for levees and other flood control structures
- Applicable federal, State and local laws, codes and regulations
- Budget preparation, monitoring and management
- Strategic planning
- Modern office methods and equipment, including computers and associated software applications

### **Ability to**

- Deliver design and construction projects.
- Implement effective project management processes.
- Plan, direct, manage, and coordinate the work of technical consultants.
- Properly interpret and make decisions in accordance with applicable laws, regulations, and policies.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain effective working relationships.
- Meet the physical, mental and environmental demands of the job.

### **Skills**

- Take initiative and exercise independent, sound judgment.
- Prepare clear, concise and comprehensive written reports.
- Relate effectively with the public, regulators, and other stakeholders, including those who take positions in conflict with the Agency.

1227 Bridge Street, Suite C, Yuba City, CA 95991



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

- Operate an office computer and requisite software applications.

## PHYSICAL DEMANDS/QUALIFICATIONS

- Office working conditions are clean, well lit, and free from extreme temperatures and humidity.
- Working conditions in the field are subject to variations in temperature, and may include wind, rain, and other elements.
- Ability to sit for potentially long periods of time throughout the work day.
- Manual dexterity and vision sufficient to operate computer systems for potentially long periods of time without experiencing abnormal hand, wrist, or eyestrain.
- Hearing sufficient to understand conversations, both in person and on the telephone.
- Hand and finger dexterity sufficient to grasp and use safety equipment.
- Verbal communications, including projecting a voice that can be heard in a noisy environment.
- Ability to sit, stand, walk, stoop, bend, climb, twist, crawl, kneel, and walk for potentially long periods of time throughout the workday.
- Work in confined spaces.
- Work on slippery and uneven surfaces.
- Ability to drive a motor vehicle.

## NON-PHYSICAL DEMANDS/QUALIFICATIONS

- Communicate information clearly and effectively on a number of different levels, both verbal and written.
- Demonstrate a high level of integrity.
- Operate effectively under deadlines.
- Be organized, detail oriented and possess the ability to prioritize a number of projects.
- Possess a valid California driver's license.

## APPLICATION PROCESS

Application content: Applicants must submit an application in either MS Word or Adobe Acrobat format via email consisting of:

- A cover letter
- A resume containing all relevant information
- Three (3) professional references

Deadline for Applications: Applications will be accepted through Thursday, May 31, 2012, 5:00 PM.

Email Address for Applications: [admin@sutterbutteflood.org](mailto:admin@sutterbutteflood.org)

Interviews: If necessary, interviews will be held on Wednesday, June 6, 2012.

Additional Information: More information may be found on the Agency's website at [www.SutterButteFlood.org](http://www.SutterButteFlood.org).



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

June 13, 2012

**TO:** Board of Directors

**FROM:** Mike Inamine, Interim Executive Director  
Scott Shapiro, General Counsel

**SUBJECT:** Procedures for Selection of Director of Engineering

---

## **Recommendation**

Delegate authority to the Executive Director to select and hire a Director of Engineering with a salary and benefit package to be developed by the Executive Director and General Counsel in consultation with the ad hoc committee. That salary and benefit package will not exceed that of the current Director of Engineering and will be based on revised duties for this position and will be adjusted based upon the candidate's qualifications.

## **Background**

At the Board's May 2012 meeting, the Board directed staff to initiate a hiring process for the Director of Engineering by preparing and circulating a posting. Following that meeting staff posted the job opening in local and trade publications and also distributed the posting via email within the flood protection community. The position remained open through May 31, 2012.

Staff and the Board Chair held interviews in order to identify highly-qualified candidates. Staff proposes to meet with the ad hoc committee of the Board over the next two weeks regarding salary and benefits. After receiving authorization from the ad hoc committee for a compensation package, staff proposes to negotiate and execute an employment contract with the preferred candidate.

Following is a summary list of functions and duties of the Director of Engineering:

1. Proactively manage the scope, schedule and budget for the FRWLP1 and other design and construction projects.
2. Strategic program administration of civil engineering projects constructed in cooperation with federal/State/local agencies pursuant to respective agreements; e.g. State Early Implementation Program grant.
3. Prepare and execute the FRWLP1 Project Management Plan.
4. Manage staff and consultant resources.
5. Provide policy level direction on planning, design and construction issues.
6. Provide technical direction for design and construction projects.
7. Maintain communication and coordinate between project teams, regulators, regional stakeholders, State and federal flood management agencies.
8. Advise and inform the Executive Director and the SBFCA Board on technical policy issues.



9. Prepare and implement regional planning in accord with the CVFPP.
10. Update SBFCA Area Plan.
11. Prepare strategic documents including: financing plans, program budgets, schedules, floodplain management plans, and related reports.
12. Work with SBFCA staff to implement public outreach for projects.
13. Work directly with landowners to resolve conflicts and impacts of construction projects
14. Prepare and administer SBFCA project contracts; e.g. HDR and Construction Legal Counsel.
15. Highlight and advance SBFCA objectives through various technical venues; e.g. co-author of 2012 ASCE GeoCongress State-of-the-Art paper *U.S. Levee and Flood Protection Engineering in the Wake of Hurricane Katrina*, organizing committee for 2012 California Levee Vegetation Symposium.
16. Review and approve civil engineering drawings, specifications, estimates, reports, and sign and stamp documents as the civil engineer in responsible charge of work.

#### **Fiscal Impact**

The Approved Final 5-Year budget includes sufficient funding for the DOE position. Therefore, there is no net budgetary impact resulting from board approval of the recommended action.

**Sutter Butte Flood Control Agency  
Executive Director Personnel Action Staff Reports  
- Attachment 3**



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

June 13, 2012

**TO:** Board of Directors

**FROM:** Scott Shapiro, Agency Counsel

**SUBJECT:** Appointment of Mike Inamine as Executive Director

---

## **Recommendation**

That the Board appoint Mike Inamine (currently Interim Executive Director & Director of Engineering) as Executive Director and authorize the Board Chair to execute a revised Employment Contract.

## **Background**

Under the Joint Exercise of Powers Agreement which created the Sutter Butte Flood Control Agency, the Agency is managed by an Executive Director. From the creation of the Agency until February 8, 2012, that position was filled by William Edgar. On January 27, 2012, Governor Brown appointed Mr. Edgar as a member of the Central Valley Flood Protection Board (CVFPB). At its February 8, 2012, Board meeting, the Agency Board appointed then Director of Engineering Mike Inamine as the Acting Executive Director in addition to his duties as Director of Engineering. At the May Board meeting, the Board appointed Mike Inamine as Interim Executive Director and directed staff to begin a recruitment process for a new Director of Engineering.

Following is a summary list of functions and duties of the Executive Director:

1. Advise and inform SBFCA Board of Directors of key policies, decisions, actions, program and project status.
2. Implement SBFCA Board of Directors actions and resolutions.
3. Maintain constructive and positive relationships with: SBFCA Board; public; State, federal and local government; landowners; non-governmental organizations; SBFCA staff and consultants.
4. Develop the strategic plan for Sutter Basin.
5. In accord with the Sutter Basin strategic plan, develop long-term SBFCA organization plan.
6. Identify/resolve other key staff resource objectives; e.g. recruit and hire the Director of Engineering.
7. Collaborate with Northern Sacramento River stakeholders and landowners to modify the Central Valley Flood Protection Plan through the Central Valley Flood Protection Board resolution process.
8. Serve on the Central Valley Flood Control Association Board of Directors, and advocate for changes to CVFPP implementation through DWR management and the CVFPB.

9. Develop a regional plan in coordination with Three Rivers Levee Improvement Agency, Yuba County Water Association, Marysville and other stakeholders as defined in the evolving DWR Regional Planning initiative, addressing key administrative and governance issues.
10. Initiate and approve SBFCA policies and actions; e.g. purchasing and contracting.
11. Assist in drafting legislation for members of Congress in the interest of SBFCA programs and projects; e.g. recently introduced bi-partisan legislation (and associated letter from members of Congress) requiring changes to harmful USACE levee vegetation policies.
12. Represent SBFCA programs and projects through various media, public meetings, stakeholder groups and professional organizations; e.g. Appeal Democrat, Sacramento Valley Watershed Forum, Sutter-Yuba Association of Realtors, Yuba City City Council.
13. As member of CVFCA Legislative Committee, represent SBFCA on legislative matters.
14. Implement the SBFCA 5-year budget.
15. Provide executive oversight and direction for SBFCA projects in partnership with DWR; e.g. Feather River East Levee Project 1; rural levee repair program (proposed).
16. Provide executive oversight and direction for SBFCA projects in partnership with United States Corps of Engineers; e.g. Sutter Basin Feasibility Study.
17. Ensure coordination and integration of important local, State and federal flood control interests; e.g. Laurel Avenue Levee Repair.
18. Work with SBFCA staff to proactively implement public outreach for programs and projects.
19. Administer SBFCA operations contracts; e.g. General Counsel.
20. Review and approve SBFCA contract task orders and invoices.
21. Resolve disputes regarding the SBFCA Assessment District.
22. Perform federal advocacy on behalf of SBFCA programs and projects, including meeting and conferring with members of Congress and staff; e.g. Congressman Wally Herger, Congressman John Garamendi.
23. Provide technical engineering and project management advice and counsel regarding SBFCA projects.

### **Discussion**

On May 1, 2012, an Ad Hoc Committee of the Board was convened to consider Agency staffing going forward. The Committee consisted of Board Chair John Miller, Board Vice-Chair James Gallagher, and Directors Gary Baland, Dave Lamon, and Al Montna. The Committee considered the ideal staffing levels for the Agency, and then how the existing staff fit within that structure. The Committee was mindful that while Mike Inamine was originally hired with a tight focus on constructing improvements to the Feather River levees as part of the Feather River West Levee Project, the Agency now has several efforts underway to assure the project can be carried out in alignment with new state and federal planning and funding guidelines. As a result, the Committee believes that the Agency needs to have a full-time Executive Director and a full-time Director of Engineering (see Board Item 5 for the duties of the Director of Engineering). The Committee also believes that Mike Inamine has performed very well in his role as Acting/Interim Executive Director and that his 30 years of experience and his time with the Agency have prepared him well to remain in that position.

Based on these and other considerations, the Committee has recommended the following to the Board:

- The Board should appoint Mike Inamine as the Executive Director.
- In light of his increased responsibility, the Ad Hoc Committee believes that Mike Inamine's compensation should be adjusted accordingly. The Committee was also mindful that he does not receive a car allowance and is driving significantly more miles in his role as Executive Director. While he does receive mileage reimbursement, that does not completely compensate for the overall wear and tear on the car. The Committee recommends an upward adjustment of \$8,500 per year, equal to about 5 percent. Mike Inamine's retirement benefits are not based on his salary, so this will not increase his retirement benefits nor create a corresponding increased retirement liability for the Agency. This amendment would not affect any other provisions of his contract nor extend the contract beyond the original 5-year, 4-month term.

**Fiscal Impact**

The Approved Final 5-Year budget includes sufficient funding for this action. Therefore, there is no net budgetary impact resulting from Board approval of the recommended action.

**County of Sutter**  
**Request for Approval of a Contribution to**  
**Sutter Butte Flood Control Agency**  
**- Attachment 4**



## County of Sutter

*Office of the County Administrator*

1160 Civic Center Boulevard  
Yuba City, California 95993  
Phone: (530) 822-7100 Fax: (530) 822-7103

October 4, 2011

To: Board of Supervisors

RE: Consideration of a Request for Approval of a Contribution to Sutter Butte Flood Control Agency for a Coalition to Advocate for Creation of New FEMA Zone for Agriculture and Authorization to Amend the Budget (4/5 vote required)

### **Recommendation**

1. Consideration of a request for approval of a contribution of up to \$40,000 to the Sutter Butte Flood Control Agency (SBFCA) for a coalition to advocate for the creation of a new FEMA zone for agriculture.
2. Authorization to amend the budget and move funds by Cancelling Prior Year Designations in General Revenues budget unit #1-209 account #49995 – equity account #31255 - *Committed – for Flood Control Projects* and increasing the budget in NDE budget unit #1-103 account #53200 – Contribution to Other Agencies.

### **Background & Discussion**

Chairman Gallagher and Supervisor Cleveland have been working on this project and are requesting that the full Board consider making this contribution.

The Federal Emergency Management Agency (FEMA) has been and continues to issue new flood insurance rate maps for Sutter County under the National Flood Insurance Program (NFIP). Because the areas of Sutter County covered by these new maps do not enjoy 100-year flood protection, all structures in these areas must carry flood insurance (if they hold a federally backed mortgage) and no additional development or significant remodeling of existing structures is allowed. The urbanized portion of the County in the vicinity of Yuba City and Live Oak will have relief from these restrictions as a result of the levee rehabilitation project being pursued by the Sutter Butte Flood Control Agency (SBFCA). However, levee rehabilitations providing relief from these restrictions for the rural portions of the County are likely to be delayed by many

14  
OCT 04 2011

years, and for some areas rehabilitation projects will likely never provide 100-year flood protection.

The Sacramento Valley Flood Control Action Workgroup (Workgroup) is a committee of the California Central Valley Flood Control Association. The Workgroup includes representatives of various public agencies in northern California, including Reclamation District 108 and 1500, Yuba County Water Agency, the Sacramento Area Flood Control Agency, and SBFCA. This Workgroup has been seeking to influence the Department of Water Resources in its preparation of the Central Valley Flood Protection Plan to provide support in the plan for rural communities. One initiative being explored by the Workgroup is to seek to change the NFIP to allow rural communities some relief from the insurance requirement and the ability to continue development in furtherance of existing industries.

SBFCA has been providing initial support for this initiative but is considering providing an increased level of support by dedicating staff and consultant time toward this effort. SBFCA's interest in this effort primarily comes from the desire of the agency to provide some relief to the areas included within SBFCA's boundary that are south of Yuba City and that will not receive relief from SBFCA's first levee rehabilitation project. This area of about 52,000 acres of agricultural land is contributing in excess of \$450,000 per year to SBFCA's assessment, and will likely not see relief from FEMA's restrictions as a result of a levee rehabilitation project for a decade.

In addition to this 52,000 acre area which would benefit from changes in NFIP policy, other rural areas of Sutter County would similarly benefit; such as the communities of Robbins and Grimes and the agricultural operations in Reclamation Districts 1500, 108, and 1001, constituting well in excess of 80,000 acres.

### **Proposal**

It is unknown exactly what an effort such as that described above would cost. One reason for the uncertainty is that the NFIP is currently being considered by Congress for reauthorization. While this provides an excellent opportunity, Congress has been considering reauthorization for three years and to date has simply authorized short-term extensions of the NFIP. Therefore, the effort could last just a few months or might stretch for an entire year. Another reason for the uncertainty is that the strategy involves building a national coalition, which means significant interaction with third parties. Recommended activities include the following:

- Development of draft legislative language in partnership with the Workgroup
- Vetting of that language with local agencies, the Department of Water Resources, and the California Farm Bureau
- Revisions to draft legislative language
- Preparation of talking points, white papers, and legislative analysis.
- Possible preparation of economic analysis
- Outreach to national agriculture and flood protection associations



- Outreach to counties and state agricultural departments around the country to seek support for the effort
- Coordination of all interested entities to draft support letters, speak at conferences, and advocate for legislative and administrative change
- Meetings in Washington D.C. with relevant Congressional Committee staff, the Department of Food and Agriculture, FEMA, and the Office of Management and Budget (the White House's policy group)
- Follow-up meetings with key members of Senate and House including Senators Dianne Feinstein, Tim Johnson (Senate Banking), Debbie Stabenow (Senate Ag) and Representatives Frank Lucas (House Ag), Spencer Bachas (Financial Services), and Peter King (FEMA oversight)
- Development of letter writing campaign in support of legislative action
- Other related activities as needed

SBFCA has estimated that a high level of effort for the remainder of the fiscal year (through June 30, 2012) would result in a maximum budget of \$80,000. In all likelihood, the actual cost would be significantly less. In addition, to the extent that this Sacramento Valley-driven effort can generate strong interest elsewhere in the country resulting in other agencies taking an active role, this cost would go down even further.

Levee District #1 is considering a financial contribution to SBFCA of \$10,000 to fund this effort. It has been suggested that Sutter County should also make a contribution of \$40,000. These two contributions, added to SBFCA funds if approved by the SBFCA Board, would allow the effort to begin in earnest. It has also been suggested that Butte, Colusa and Yuba Counties might be interested in joining this effort with a contribution as well. In addition, because SBFCA does not have a federal lobbyist and Sutter County, Butte County, and Yuba City all use the Ferguson Group for federal lobbying; the Ferguson Group could provide supporting services in Washington D.C. at no additional cost.

**Prior Board Action:**

There have been no prior Board of Supervisors actions on this item.

**Alternatives**

The Board could decide to contribute a lesser amount, or to not contribute.

**Other Department or Agency Involvement:**

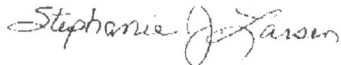
Other agencies involved would include SBFCA and Levee District #1 directly and members of the Sacramento Valley Flood Control Action Workgroup indirectly.

**Action Following Approval:**

If approved by all agencies, SBFCA will move forward with the above strategy.

**Fiscal Impact**

The suggested cost of the contribution will not exceed \$40,000. The funds would be appropriated by Cancelling Prior Year Designations in General Revenues budget unit #1-209 account #49995 – equity account #31255 - *Committed – for Flood Control Projects* in the amount of \$40,000 and increasing the budget in NDE budget unit #1-103 account #53200 – Contribution to Other Agencies by a like amount.



STEPHANIE J. LARSEN  
County Administrative Officer

SJL/MG/ja

**County of Sutter Board of Supervisors  
October 4, 2011 Meeting Minutes  
- Attachment 5**



**UNAPPROVED**

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF SUTTER, STATE OF CALIFORNIA  
SESSION OF OCTOBER 4, 2011**

The Board of Supervisors of the County of Sutter, State of California, met on the above date in Regular Session at 7:00 p.m. in the Board of Supervisors Chambers located in the Hall of Records Building at 466 Second Street, Yuba City, California.

**MEMBERS PRESENT:** Supervisors Larry Montna, Stan Cleveland, Larry Munger, Jim Whiteaker, and James Gallagher

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Stephanie J. Larsen, County Administrative Officer; Richard Stout, Deputy County Counsel ; and Karna-Lisa Aucoin, Deputy Clerk of the Board

\*\*\*\*\*

**REGULAR SESSION**

Chairman Gallagher called the meeting to order at 7:00 p.m.

\*\*\*\*\*

**ROLL CALL**

The Board Clerk called the roll of the Board, and attendance is shown above.

\*\*\*\*\*

**PLEDGE OF ALLEGIANCE TO THE FLAG**

Elaina Ruiz, 4-H member, led the Board and the audience in the Pledge of Allegiance to the Flag.

\*\*\*\*\*

**PRESENTATIONS**

Chairman Gallagher presented a proclamation declaring October 2-8, 2011 as 4-H week in Sutter County to Megan Osborn, 4-H Advisor; Chris Greer, Sutter County Farm Advisor; and several 4-H members who were in attendance.

Discussion regarding the new Sutter County flag, designed by 4-H members, followed.

Chairman Gallagher presented a proclamation declaring October 1-16, 2011 as Binational Health Week in Sutter County to Angel Diaz, President Emeritus, of North Valley Hispanic Chamber of Commerce.

\*\*\*\*\*

## **PUBLIC PARTICIPATION**

There were no comments from those in the audience.

\*\*\*\*\*

## **CONSENT CALENDAR**

On motion of Supervisor Whiteaker, seconded by Supervisor Cleveland and unanimously carried, the Board approved the Consent Calendar, with Item Nos. 3 and 10 removed for discussion, as follows:

### **Clerk of the Board**

- 1) Appointment of a) John Bidegain and Ron Ruzich to Reclamation District No. 777 Board of Directors; and b) Kenneth Sanders and Ken Bertolini to Reclamation District No. 2056 Board of Directors (all four-year terms)
- 2) Authorization to prepare a proclamation for Casa de Esperanza declaring the month of October as Domestic Violence Awareness Month in Sutter County

### **Community Memorial Museum**

- 3) **REMOVED FOR DISCUSSION:** Adoption of a resolution naming the new Museum Meeting Room "Ettl Hall"

### **Human Services – Mental Health Division**

- 4) Approval of an agreement (A11-157) with Victor Community Support Services, Inc. for provision of community-based mental health services for Fiscal Year 2011-2012 and authorization for the Chairman to sign the agreement
- 5) Approval of the first amendment (A11-158) to the agreement with Nevada County for purchase of Bed Days in the Sutter-Yuba Mental Health Services Psychiatric Health Facility and authorization for the Chairman to sign the amendment
- 6) Approval of the Reimbursement Agreement (A11-159) with Marysville Joint Unified School District for provision of educational services and authorization for the Chairman to sign the Agreement
- 7) Approval of a Memorandum of Understanding (MOU) (A11-160) with Yuba County Probation for the provision of mental health services at the Maxine Singer Youth Guidance Center and authorization for the Chairman to sign the MOU

### **Public Works**

- 8) Approval to purchase and install a sole source selection of a Pelco surveillance system for the Minimum Security Jail Upgrade Project
- 9) Approval of a waiver of the Veterans' Memorial Community Hall rental fees for the Yuba County Sheriff's Women's Posse
- 10) **REMOVED FOR DISCUSSION:** Approval of an Administrative Policy and a rental agreement for Community Memorial Museum of Sutter County - Ettl Hall, and adoption of a resolution authorizing the Chairman to sign the agreement

### Special Districts Consent Calendar

- 11) Approval of the minutes of the September 13, 2011 meeting of the following Special Districts:
- a) El Cerrito County Drainage District
  - b) El Margarita County Drainage District
  - c) Rio Ramaza Community Services District
  - d) Sutter County Flood Control and Water Conservation District
  - e) Sutter County Water Agency (see minutes attached)
  - f) Tierra Buena County Drainage District
  - g) Water Works District #1

### REMOVED FOR DISCUSSION

#### Consent Item No. 3

Supervisor Munger said he removed this item because he wanted to be sure citizens knew the reason for the request to name the Museum's new meeting room Ettl Hall is that the project was made possible because of a donation made by Dorothy Ettl's estate, when she passed away.

**RESOLUTION NO. 11-084, A RESOLUTION OF THE SUPERVISORS NAMING THE MUSEUM MEETING ROOM, was adopted on motion of Supervisor Munger, seconded by Supervisor Cleveland and unanimously carried as appears of record in the office of the Clerk of the Board in Resolution Book 57 at Page 238 to which record reference is hereby made for further particulars and by such reference incorporated herein and made a part hereof.**

\*\*\*\*\*

#### Consent Item No. 10

Chairman Gallagher requested this matter, regarding the Administrative Policy and rental agreement for the Community Memorial Museum – Ettl Hall be considered after the Public Hearing which relates to fees and deposits for use of the hall.

It was the consensus of the Board to consider this matter after the Public Hearing.

\*\*\*\*\*

#### **12) PUBLIC HEARINGS**

This having been heretofore fixed as the date, time and place to hold a Public Hearing regarding Hearing to consider adopting fees and deposits to be charged for the use of Ettl Hall in the Community Memorial Museum of Sutter County, and the adoption of a resolution authorizing the fees and deposits to be charged, Certificate of Publication being on file in the office of the Clerk of the Board, the matter was called to be heard.

Bob Starr, Deputy Director of Public Works – General Services, reviewed the staff report and recommended action.

Chairman Gallagher opened the Public Hearing. Hearing no comment, Chairman Gallagher closed the public hearing.

Discussion and a question/answer period followed.

**RESOLUTION NO. 11-086, A RESOLUTION OF THE BOARD OF SUPERVISORS ESTABLISHING FEES AND CLEANING DEPOSITS FOR Ettl Hall, was adopted on motion of Supervisor Whiteaker, seconded by Supervisor Cleveland, with Supervisor Montna dissenting, and carried by a 4-1 vote as appears of record in the office of the Clerk of the Board in Resolution Book 57 at Page 240 to which record reference is hereby made for further particulars and by such reference incorporated herein and made a part hereof; and directed staff to evaluate these fees in six months to determine whether or not they are appropriate.**

\*\*\*\*\*

**Consent Item No. 10**

**RESOLUTION NO. 11-085, A RESOLUTION OF THE BOARD OF SUPERVISORS AUTHORIZING THE RENTAL AGREEMENT TO BE USED WHEN RENTING Ettl Hall AND AUTHORIZE THE SIGNING OF THE AGREEMENT OF BEHALF OF THE COUNTY, was adopted on motion of Supervisor Munger, seconded by Supervisor Whiteaker, with Supervisor Montna dissenting, and carried by a 4-1 vote as appears of record in the office of the Clerk of the Board in Resolution Book 57 at Page 239 to which record reference is hereby made for further particulars and by such reference incorporated herein and made a part hereof.**

\*\*\*\*\*

**APPEARANCE ITEMS**

**13) Animal Control Facility – Architectural Design Contract Service Change and Plan Check**

Guadalupe Rivera, Engineer-Architect reviewed the staff report and recommended action.

Discussion and a question/answer period followed.

**On motion of Supervisor Whiteaker, seconded by Supervisor Munger and unanimously carried, the Board approved the contract Service Change with Swatt Miers Architects in the amount of \$30,436.00 and a plan check for \$2,330.00, authorized the Director of Public Works to execute the Service Change, and approved the associated Budget Amendment. (4/5 vote) (FT 201212)**

\*\*\*\*\*

**Contribution of Up to \$40,000 to the Sutter-Butte Flood Control Agency**

Chairman Gallagher introduced the item and discussed the importance and advantages of assisting the Sutter-Butte Flood Control Agency (SBFCA) in creation of a coalition to advocate for the creation of a new Federal Emergency Management Agency (FEMA) zone for agriculture.

Patricia Miller, Yuba City, of the Sutter County Taxpayer Association, cautioned against using funding that has been designated for other use to assist in formation of the proposed coalition.

Lengthy discussion followed.

Bill Edgar, Executive Director of SBFCA, discussed the matter and addressed questions of the Board.

Scott Schipperro, SBFCA Counsel, discussed the benefits of the proposed coalition and explained several other government agencies state have expressed support and interest in assisting or participating.

**On motion of Supervisor Whiteaker, seconded by Supervisor Munger and unanimously carried, the Board approved the recommended action of the request of a contribution of up to \$40,000 to the SBFCA for the creation of a new FEMA zone for agriculture, and authorized an amendment of the budget to move funds by cancelling prior year designations in General Revenues budget unit #1-209 account 49995 – equity account #31255 – Committed for Flood Control Projects and increasing the budget in NDE budget unit #1-103 account #53200 – Contribution to Other Agencies; but amended the recommended action to first accomplish the contribution by a budget amendment using CalPine funds which would require concurrence from CalPine, and if not, proceed with the recommendation as presented.**

\*\*\*\*\*

**CORRESPONDENCE**

Miscellaneous correspondence was noted and filed.

\*\*\*\*\*

**OTHER BUSINESS – BOARD OF SUPERVISORS**

Memorial adjournments and direction to send letters of condolence:

<b>Motion by:</b>	<b>Seconded by:</b>	<b>Vote:</b>	<b>In Memory of:</b>
Supervisor Whiteaker	Supervisor Munger and the Full Board	Carried	Rob Young
Supervisor Montna	Supervisor Whiteaker	Carries	Ann Johnson



Supervisors spoke about their recent activities and upcoming events.

With no further business coming before the Board, the meeting was adjourned at 8:15 p.m.

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**JAMES GALLAGHER,  
CHAIRMAN**

**ATTEST:**

**DONNA M. JOHNSTON,  
CLERK OF THE BOARD**

**By: Karna-Lisa Aucoin,  
Deputy**

(A recording of the meeting can be heard/viewed from the  
Board of Supervisors webpage at: <http://suttercountyca.igm2.com/Citizens/Default.aspx>  
and DVDs of the meeting are available for citizens to check-out from the  
Sutter County Library at 750 Forbes, Avenue, Yuba City, CA)

**Sutter Butte Flood Control Agency  
Audit Staff Report  
- Attachment 6**



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

February 8, 2012

**TO:** Board of Directors

**FROM:** William H. Edgar, Executive Director

**SUBJECT:** Presentation of Agency FY 07/08 through FY 09/10 and FY 10/11 audited financial statements

---

## **Background**

In accordance with the JPA, the Agency is to conduct an independent audit of its financial statements on an annual basis. For the years prior to the creation of the Assessment District, the Agency's funds were included as a part of the City of Yuba City's Comprehensive Annual Financial Report. Because the Agency is now self-sustaining, management has conducted independent audits of all of the financial activities of the Agency since its creation.

The purpose of this item is to present the resulting financial statements and related audit to the Board for its review.

We have attached the following documents to this staff report:

- Annual Financial Report – Fiscal Year Ended June 30, 2011
- Annual Financial Report – Three Fiscal Years Ended June 30, 2010
- Management Report and Auditor's Communication Letter June 30, 2010 and 2011

## **Analysis**

The Management's Discussion and Analysis, which begins on page 3 of the June 30, 2011 Annual Financial Report, provides an analysis of financial activities for the fiscal year and reviews the accompanying financial statements.

The Agency ended Fiscal Year 2010/11 with a combined fund balance of \$4,436,854, which was \$1,918,737 over the ending balance projected in the final adopted budget. Further the agency commenced collection of Assessments and was able to defer any additional borrowing while still moving its EIP project forward.

## **Audit**

The Agency has received unqualified opinions, otherwise known as a "clean audit," from the independent auditor for both sets of audited financial statements.

Paragraph 3 of the audit opinion letter in the June 30, 2011 Financial Report (on page 1) states as follows:

*"In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Sutter Butte Flood Control Agency, as of June 30, 2011, and the respective changes in financial position, for the fiscal year then ended, in conformity with accounting principles generally accepted in the United States of America."*

Likewise, Paragraph 3 of the audit opinion letter in the three fiscal years ended June 30, 2010 Financial Report (on page 1) states as follows:

*"In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Sutter Butte Flood Control Agency, as of June 30, 2010, and the respective changes in financial position, for the three fiscal years then ended, in conformity with accounting principles generally accepted in the United States of America."*

With regard to the Management Report covering all of the fiscal years audited, three areas were identified for improvement. As noted in the report, two of these areas have been addressed and resolved and the final area will be addressed as recommended by the auditor.

**Recommendation:**

Staff recommends that the Board accept the attached financial statements and related audit reports for filing.

Thank you.

Attached:

- Sutter Butte Flood Control Agency Annual Financial Report for the Fiscal Year Ended June 30, 2011
- Sutter Butte Flood Control Agency Annual Financial Report for the Three Fiscal Years Ended June 30, 2011
- Sutter Butte Flood Control Agency Management Report and Auditor's Communication Letter June 30, 2010 and 2011

**SUTTER BUTTE FLOOD CONTROL AGENCY**

**MANAGEMENT REPORT  
AND  
AUDITOR'S COMMUNICATION LETTER**

**June 30, 2010 and 2011**

**SUTTER BUTTE FLOOD CONTROL AGENCY**  
June 30, 2010 and 2011

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December 21, 2011

Members of the Board of Directors  
Sutter Butte Flood Control Agency  
1227 Bridge Street, Suite C  
Yuba City, California 95991

In planning and performing our audit of the financial statements of the governmental activities and each major fund of the Sutter Butte Flood Control Agency (Agency), as of and for the three fiscal years ended June 30, 2010 and one fiscal year ended June 30, 2011, in accordance with auditing standards generally accepted in the United States of America, we considered the Agency's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Agency's internal control. Accordingly, we do not express an opinion on the effectiveness of the Agency's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weakness and, therefore, there can be no assurance that all such deficiencies have been identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies presented in the current year recommendations section as Findings 2011-01 and 2011-02 to be significant deficiencies in internal control.

During our audit we noted a certain other matter involving internal control and its operation, and are submitting for your consideration, a related recommendation designed to help the Agency make improvements and achieve operational efficiencies. This recommendation is described in the current year recommendations section as Finding 2011-03. Our comment reflects our desire to be of continuing assistance to the Agency.

The Agency's written responses to the findings identified in our audit are described in the current year recommendations section. We did not audit the Agency's responses and, accordingly, we express no opinion on them. In addition, we would be pleased to discuss the recommendations in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing these recommendations.

We have included in this letter a summary of communications with the members of the Board of Directors as required by professional auditing standards. We would like to thank the Agency's management and staff for the courtesy and cooperation extended to us during the course of our engagement. The accompanying communications and recommendations are intended solely for the information and use of management, the members of the Board of Directors, and others within the Agency, and are not intended to be, and should not be, used by anyone other than these specified parties.

*Moss, Levy & Hartzheim*

MOSS, LEVY & HARTZHEIM, LLP  
Culver City, California





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January 18, 2012

Members of the Board of Directors  
Sutter Butte Flood Control Agency  
1227 Bridge Street, Suite C  
Yuba City, California 95991

We have audited the financial statements of the governmental activities, and each major fund of the Sutter Butte Flood Control Agency (Agency) for the three fiscal years ended June 30, 2010 and one fiscal year ended June 30, 2011. Professional standards require that we provide you with the information about our responsibilities under auditing standards generally accepted in the United States of America and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated December 20, 2011. Professional standards also require that we communicate to you the following information related to our audit.

### Significant Audit Findings

#### *Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Agency are described in Note 1 to the basic financial statements. As discussed in Note 1 of the notes to the basic financial statements, twelve new accounting policies were adopted during the three fiscal years ended June 30, 2010 and one fiscal year ended June 30, 2011. None of the new pronouncements had an effect on the Agency's financial statements except for Governmental Accounting Standards Board (GASB) Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. We noted no transactions entered into by the Agency during the fiscal years for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements was the collectability of assessment revenues.

Management estimates that 100% of assessment revenues are collectable. We evaluated the key factors and assumptions used to develop this estimate and determined that it is reasonable in relation to the financial statements taken as a whole.

#### Difficulties Encountered in Performing the Audit

We encountered no difficulties in dealing with management in performing and completing our audit.

#### Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, one of the misstatements detected as a result of audit procedures and corrected by management was material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole. The one adjustment was for taxes receivable and deferred revenue.

#### Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

#### Management Representations

We have requested certain representations from management that are included in the management representation letters dated December 21, 2011 and January 18, 2012.

#### Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Agency's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

#### Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Agency's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

#### Other Information in Documents Containing Audited Financial Statements

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and

reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

This information is intended solely for the use of the Board of Directors of the Agency and management of the Agency and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

*Moss, Levy & Hartzheim*

MOSS, LEVY & HARTZHEIM, LLP  
Culver City, California

## CURRENT YEAR RECOMMENDATIONS

### Significant Deficiencies

#### 2011-01 Finding – Lack of certain policies:

During our review of Agency policies, we noted that the following policies have yet to be implemented:

- a. Capital assets
- b. Fraud reporting
- c. Purchasing policy
- d. Computer use
- e. Disaster recovery plan
- f. Drug free
- g. Labor regulation policies associated with grants

#### Effect:

Without the above policies, employees and contractors of the Agency do not have written guidelines and plans to follow when performing their duties. This could lead to a misappropriation of funds, fraud to occur and go unreported, and grants to be disallowed or not awarded.

#### Recommendation:

We recommend that the Agency implement the seven policies above, for stronger controls and proper written guidelines.

#### Management's Response:

SBFCA management is in the process of researching, developing and implementing the recommended policies. To the extent any Labor regulations and policies are associated with current or future state or federal funding programs, SBFCA will implement applicable labor compliance programs as required.

#### 2011-02 Finding – Lack of insurance coverage:

During our audit, we noted that there was no liability insurance in place from the Agency's inception to June 30, 2008.

#### Effect:

Lack of insurance coverage could lead to unnecessary liability of the Agency.

#### Recommendation:

We recommend that the Agency have sufficient insurance coverage at all times.

#### Management's Response:

During the time period noted, SBFCA was in the process of obtaining liability insurance. The recommendation has been implemented.

## **Other Matter**

### **2011-03 Finding – Lack of “paid” stamp and approval on paid invoices:**

During the test of cash disbursements, we noted that three paid invoices lacked a “paid” stamp and one paid invoice lacked an approval signature.

#### Effect:

Without a “paid” stamp defacing each paid invoice, there is a possibility of the paid invoice being resubmitted for payment and a duplicate payment could result. Also, paid invoices that do not contain approval signatures indicate that the invoice may not have been approved for payment.

#### Recommendation:

We recommend that all paid invoices be stamped “paid” at the time of payment, to avoid duplicate payments. Also, all invoices should contain approval signatures prior to processing for payment, to ensure that the invoice is for appropriate Agency business and has been reviewed and approved by the appropriate personnel.

#### Management’s Response:

The recommendation has been implemented along with additional invoice review and approval procedures.

**Sutter Butte Flood Control Agency  
Policies for Capital Assets, Fraud Reporting, Purchasing  
Policy, Business Continuity Plan  
- Attachment 7**



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

May 9, 2012

**TO:** Board of Directors

**FROM:** Mike Inamine - Acting Executive Director

**SUBJECT:** Approval of certain policies per the management recommendations of the independent auditor

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## **Recommendation**

Approve the attached policies covering, Business Preparedness & Resumption, Fraud Reporting, Purchasing and Capital Assets.

## **Background**

On February 8, 2012, the Board received audited financial statements covering all prior years of the Agency's operations and a management report on the internal controls of the Agency prepared by the independent audit firm Moss, Levy and Hartzheim. The management report presented several recommendations, one of which had components that had not yet been fully addressed by the Agency. This recommendation advised the Agency to implement seven policies covering:

- a. Capital assets
- b. Fraud reporting
- c. Purchasing policy
- d. Computer use
- e. Disaster recovery plan
- f. Drug free workplace
- g. Labor regulation policies associated with grants

Of the seven recommended policy topics, two, Computer Use and Drug Free Workplace, have since been developed and are incorporated within the Agency's employee handbook. The handbook was developed in preparation of hiring the Director of Engineering. One of the recommended policy topics, Labor Regulation policy, is recommended only in the event it is required by grant conditions and requirements. None of the Agency's current grants require a labor regulation policy at this time. The remaining four policies covering;

- a. Capital assets
- b. Fraud reporting
- c. Purchasing
- d. Disaster Recovery Plan (hereby referred to as a Business Disaster Resumption & Preparedness Plan)

are presented for the Board's consideration. The following discussion provides a brief overview of each policy.

## **Capital Asset Policy**

The Capital Asset Policy is designed to aid the Agency by clarifying the Agency's definition of

capital assets and accounting procedures for capital assets. Proper capital asset accounting provides the Agency with the data necessary to:

1. Prepare financial reports
2. Safeguard sizable investments
3. Identify custodial responsibility
4. Assist with risk management/insurance activities
5. Formulate future acquisition and retirement policies
6. Recover costs from Federal and State programs

The policy sets the relevant thresholds for identifying what types of purchases are to be considered capital assets for accounting purposes, and identifies the responsible staff person for implementing the policy.

### **Purchasing Policy**

The purpose of the Purchasing Policy is to provide the Agency a means of assuring continuity and uniformity in its purchasing practices, to define the responsibilities of the various staff of the Agency, and to provide related procedures for purchasing materials and supplies and contracting for services including professional services.

The Purchasing Policy covers topics such as the thresholds for obtaining multiple bids for materials and services, and the associated procedures/guidelines for contracting professional services, procedures and criteria for sole sourcing, the criteria for qualifying the lowest responsible bidder, and procedures for administering protests of awards. The Policy also outlines the responsibilities of the Executive Director and relevant Agency staff.

### **Fraud Reporting Policy**

The Fraud Reporting Policy sets strict guidelines on how the Agency would deal with suspected dishonest use of its resources by employees and contract staff. The policy states the Agency's goals when dealing with suspected fraud and the Agency's definition of fraud. The policy states the responsibility of Agency staff to report fraud and the procedures to report it. The Policy also sets forth the protection afforded by the Agency for anyone that, in good faith, reports suspected fraud. The responsibility for administering the policy falls to the Executive Director, however, the Chair of the Board, Treasurer and General Counsel of the Agency are the identified parties to whom suspected fraud is to be reported.

### **Business Disaster Resumption & Preparedness Plan**

Because the Agency relies heavily on technology and is working on an aggressive schedule to implement its project, it is important that the Agency has a plan to provision for the possibility of compromised access to critical information and data. The plan sets forth the responsibility for ensuring electronic information is stored in such a manner where it is always accessible to the Executive Director and establishes the minimum criteria for ensuring continuity. Because the Agency relies heavily upon the resources made available by contract service providers, the plan also sets criteria on contract staff's provision for information storage and redundancy.

Staff recommends that the Board adopt the attached policies and take the necessary actions to implement them.

### **Fiscal Impact**

The enclosed policies have no impact on the Agency's approved budget as they identify no specific purchases or additionally needed services to implement that are not already included within the budget.





# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

## **CAPITAL ASSET POLICY**

**Responsible Officer: Financial Officer**

### **POLICY STATEMENT**

The Agency's policies for the acquisition, valuation, and disposition of capital assets are contained within this document. These policies are designed to aid the Agency by clarifying the Agency's definition of capital assets. Relevant State Government Codes and Accounting Standards are incorporated within the policies. Proper capital asset accounting provides the Agency with the data necessary to:

1. Prepare financial reports.
2. Safeguard sizable investments.
3. Identify custodial responsibility.
4. Assist with risk management/insurance activities.
5. Formulate future acquisition and retirement policies.
6. Recover costs from Federal and State programs or reimbursement programs.

### **BACKGROUND**

Capital assets are broadly defined as financial resources that are tangible or intangible in nature and have a useful life greater than one year. Examples of capital asset categories are Land, Land Improvements, Buildings, Building Improvements, Infrastructure, and Equipment. The Agency's Capital Asset Policy defines capital assets under each classification, addresses useful life ranges, sets minimum capitalization thresholds, and gives examples of costs to include in the value of the capital asset. Additionally, the policy discusses the treatment of unique items such as computer software, capital leases, self-constructed assets, donated assets, construction in progress, costs incurred subsequent to acquisition, and transfers of assets between funds.

Capital assets are to be accounted for at historical cost, or if cost is not practically determinable, at estimated fair market value at the time acquired or placed into service. Generally, cost includes all expenses associated with the acquisition, construction and installation of a capital asset.

If the funding source of an asset is a grant, or the asset is acquired by gift or donation, the source or donor should be identified. If multiple funding sources apply, all sources should be identified.

### **RESPONSIBILITY**

#### **Financial Officer Responsibility**

Article 8 of the Agency's Joint Powers Agreement states "full books and accounts shall be maintained for the Agency in accordance with the practices established by, or consistent, with those utilized by the financial office of the State of California for like public entities. In particular, the Agency's Financial Officer and Treasurer shall comply strictly with the requirements for the statute governing joint powers agencies, Chapter 5, Division 7, Title 1 of

the Government Code commencing at Section 6500.” Accordingly, the Agency’s Financial Officer is responsible for establishing and enforcing the Agency’s Capital Asset Policy. The Financial Officer will make revisions to the Policy as required by law, generally accepted accounting principles, or practical necessity. Final determination for definitions, valuations, and proper accounting entries required to record capital asset transactions rests with the Financial Officer. The Financial Officer shall maintain a capital asset system to be used for a significant portion of the Agency’s capital assets. The Financial Officer may verify the integrity of capital asset records by conducting periodic physical inventories of capital assets and make any necessary adjustments to the capital asset system and financial records.

### **Agency Staff Responsibility**

An inventory of all capital assets is to be completed by July 10 of each fiscal year ending on June 30. To facilitate the fulfillment of the requirements of this section and in order to prepare accurate financial reports, Agency staff shall appoint a representative to work with the Financial Officer to maintain accurate and up-to-date capital asset accounting records.

### **Summary of Capitalization Thresholds**

Although the service life of certain buildings, improvements, and equipment may extend beyond one year, the Agency has established minimum capitalization thresholds for administrative purposes. All purchases below the applicable class threshold are to be expensed in the current period.

Class	Capitalization Threshold
Land	\$0
Land Improvements	\$100,000
Buildings	\$100,000
Building Improvements	\$100,000
Infrastructure: Pavement, Bridges, All Other	\$100,000
Equipment, Furniture, & Vehicles	\$5,000
Intangible Assets	\$5,000
Capital Lease Property	\$5,000
Leasehold Improvements	\$100,000
Works of Art / Historical Treasures	\$0
Construction in Progress for Year End Reporting	Projects to exceed \$100,000 at completion

### **Useful Life Ranges**

Useful lives are determined by suggested useful life tables and professional judgment, since similar capital assets may have different useful lives depending on how and where they are used. Questions about the useful life of a specific asset should be decided upon jointly by Agency staff and the Financial Officer. Items that have useful lives of less than one (1) year are not to be capitalized.

### **Budgetary Control**

Assets are categorized, budgeted and reported by account code. The Agency Board considers capital asset acquisitions as part of the budget process. The capital budget may be

added or changed during the budget year, but all changes to the capital budget must be presented to the Board for approval.

## **ACQUISITION OF CAPITAL ASSETS**

### **Land and Land Improvements**

#### **Definitions:**

*Land* - all investments in real property other than structures and land improvements.

*Land Improvements* - non-building assets that enhance the quality or facilitate the use of land. Examples of depreciable land improvements include: parking lots, driveways, sidewalks, retaining walls, fencing, outdoor lighting, landscaping, irrigation systems, recreation areas, athletic fields and courts, and fountains. Land improvements such as fill, grading, and excavation that provide permanent benefits and incur limited deterioration with use or the passage of time are to be classified with land as non-depreciable.

**Capitalization:** All Land is to be capitalized. Land Improvements valued at or more than \$100,000 will be capitalized.

**Valuation:** The cost of land includes all expenditures in connection with acquisition and preparation for use such as, but not limited to: purchase price appraisal and negotiation fees, title search and filing/recording fees, relocation costs, costs of consents, clearing, filling, and grading land for use, condemnation costs, demolishing or removing structures, surveying fees, or hazardous waste clean-up. Receipts from the sales of salvage should be credited against the land cost. In the case of land and buildings acquired as a single parcel, the value of the land and buildings should be determined individually and recorded separately.

### **Buildings and Building Improvements**

#### **Definitions:**

*Buildings* - structures that are physical property of a permanent nature that enclose people, equipment, services or functions. Buildings may include major high cost components such as boilers, elevators, HVAC systems and roofs. If practical, these components should be recorded separately in the capital asset system to simplify future replacement transactions and because its useful lives can differ from buildings.

*Building Improvements* - additions or improvements to buildings that increase the value or extend the useful life of a building. Refer to "Treatment of Costs Subsequent to Acquisition" section of this document for more specific information. Examples include replacing major building components, structural additions to a building, major energy conservation projects, installation of upgraded plumbing or electrical systems, and major renovations of exterior structural deterioration.

**Capitalization:** Buildings and Building Improvements valued at or more than \$100,000 will be capitalized.

**Valuation:** The cost of Buildings and Building Improvements includes all expenditures in connection with acquisition or construction, such as: purchase price or construction costs, fixtures attached to the structure, filing and other closing costs, inspections and tests, architects' fees, payment of damages, cost of permits and licenses, accident or injury costs, or the cost of insurance during construction. The cost shall be reduced for: sale of salvage

from materials charged against the construction, discounts, allowances and rebates secured, and amounts recovered through surrender of liability and casualty insurance. For proprietary funds only, the actual or imputed interest costs associated with the construction period shall be capitalized in accordance with Financial Accounting Standards Board (FASB) Statement No. 34, FASB Statement No. 62, and supplemental updates.

## **Infrastructure**

### **Definition:**

*Infrastructure* - categorized as community service assets that are long-lived, generally stationary in nature, and normally preserved for a significantly greater number of years than most capital assets. Examples include pavements, curbs, gutters, and sidewalks associated with roadways, bridges, sewer systems, water distribution systems, and water drainage systems.

*Expansions and Improvements to Infrastructure* - capital outlays that increase the asset's capacity or level of service, such as adding lanes to a road.

**Capitalization:** Infrastructure and infrastructure improvements valued at or more than \$100,000 will be capitalized. Refer to "Treatment of Costs Subsequent to Acquisition" section of this document for more specific information.

**Valuation:** The cost of Infrastructure includes the purchase price, contract prices, internal costs (see Self-Constructed Assets paragraph), and any other expenditures necessary to put the infrastructure into its intended state of operation. Refer to the Buildings paragraph for examples of costs to include.

Land purchased for infrastructure projects shall be capitalized into the Land account. Land must be capitalized as a separate non-depreciable asset within the Land capital account at fair market value as of the date of acceptance.

Preservation costs that significantly extend the useful life of an asset beyond its original estimated useful life, but do not increase the capacity of the asset, are generally capitalized. Examples are seismic retrofitting bridges and reconstructing, recycling, or overlaying pavement.

Maintenance costs allow an infrastructure asset to continue to operate at its intended level of service during its originally established useful life and are not to be capitalized.

## **Equipment**

**Definition:** Equipment - physical moveable personal property such as machines, tools, furniture, vehicles, aircraft, mobile home/office trailers, and computer servers. Equipment does not include major systems integrated into a building or structure such as elevators, boilers, roofs, or HVAC. Software capital assets are managed within the Equipment capital account (see Computer Software paragraph).

**Capitalization:** Individual units valued at or more than \$5,000 and a useful life of more than one (1) year.

The group method for capitalization may apply in limited circumstances for equipment. Grouping includes a number of different units purchased at the same time whose defined purpose is to work in conjunction with one another, their independent operation is not feasible, and replacement of which is intended as a whole. Purchase of multiple identical units (e.g. 4 printers @ \$1,850 each) rarely represents valid grouping. Examples of valid grouping include:

- Modular furniture - Initial lot purchases and each subsequent lot or component more than \$5,000
- Computer systems - hardware and software components designed to work exclusively with one another
- Unique multi-device systems for communications or vehicles

**Valuation:** The cost of equipment includes all costs necessary to acquire and place the equipment into service, such as: purchase or construction price less discounts, installation costs, freight or other carriage charges, initial operational training, sale, use, or transportation taxes. The cost of new equipment should not be reduced by the value of trade-ins. Trade-ins shall be retired from the capital asset and financial systems, and any resultant gain or loss for the asset being traded-in should be recognized on its disposition for Proprietary Funds.

### **Intangible Assets**

**Definition:** Intangible assets - financial assets that lack physical substance. Common examples of intangible assets include easements, rights-of-way and computer software.

**Software Capitalization:** An individual software application or license purchased for the Agency use shall be capitalized if it is valued at or more than \$5,000 and its useful life will be more than one (1) year.

**Software Valuation:** Software purchased as a component of a system designed to work exclusively with specific hardware shall be capitalized with the hardware using the group method and the \$5,000 threshold as noted in the equipment paragraph above. Computer software developed or obtained for internal use shall follow the capital asset guidance provided in the AICPA SOP 98-1. Vendor modifications, such as patches and version upgrades, used to keep software in a usable state as opposed to adding significant new capabilities, should be charged as maintenance expense.

### **Capital Leases**

A capital lease is a lease that transfers substantially all the benefits and risks of ownership of property to the Agency at the end of the lease term. Leases which meet one of the four requirements listed below, as defined by Financial Accounting Standards Board (FASB) Statement 13, are considered capital leases and shall be accounted for as a capital asset if the cost of the property exceeds its class's capitalization threshold.

- The lease transfers ownership of the property to the lessee by the end of the lease term.
- The lease contains a bargain purchase option.
- The lease term equals 75% or more of the estimated economic useful life of the leased property.\*



- The present value of the minimum lease payments exceeds 90% or more of the fair market value of the lease property at the date of the lease agreement.\*

*\*The last two criteria do not apply when the asset is already in the last quarter of its economic life, which includes the asset's economic life prior to the lease.*

For Proprietary Funds only, the actual or imputed interest costs associated with capital leases shall also be capitalized in accordance with FASB Statement No. 34, FASB Statement No. 62, and supplemental updates.

### **Self-Constructed Assets**

Capital assets constructed by the Agency are recorded in the same manner as those acquired by purchase or construction contract. Capitalization thresholds continue to apply. Costs are initially charged to the accounts of the cost center performing the construction and are then transferred to the capital asset account. These costs include direct labor, materials, equipment usage and overhead. Overhead is limited to those items, such as worker's compensation and employee group insurance premiums, retirement, sick leave, and vacation allowances, which can be distributed on the basis of direct labor. Administrative overhead outside the cost center may be capitalized when clearly related to the construction.

### **Leasehold Improvements**

Leasehold improvements are improvements to buildings or structures that the Agency leases to be used during the term of that lease. Leasehold improvements are permanent in nature in that they involve physical modifications to a leased property. As such, moveable equipment or office furniture that is not attached to the leased property is not considered a leasehold improvement. Leasehold improvements do not have a residual value as they revert to the lessor at the expiration of the lease.

Leasehold improvements are capitalized by the lessee and are amortized over the shorter of (1) the remaining lease term, or (2) the useful life of the improvement. Improvements made in lieu of rent shall not be capitalized. If the lease contains an option to renew and the likelihood of renewal is uncertain, the leasehold improvement should be written off over the life of the initial lease term or useful life of the improvement, whichever is shorter.

### **Eminent Domain**

The value of a capital asset obtained through eminent domain shall include all direct costs included in reaching a settlement with the seller.

### **Works of Art and Historical Treasures**

Works of Art and Historical Treasures shall be capitalized and recorded at historical cost. Works of Art and Historical Treasures that are inexhaustible should not be depreciated.

### **Donated Assets**

Capital assets that are donated to the Agency are to be recorded at its fair market value as of the date of acceptance by the Board, plus any ancillary costs necessary to place those assets into service.

## **ADDITIONAL CAPITAL ASSET ISSUES**

### **Treatment of Costs Subsequent to Acquisition**

*Major expenditures* that increase future benefits from an existing capital asset beyond its previously assessed standard of performance shall be capitalized. After a capital asset has been placed into service, subsequent expenditures are capitalized if they meet the asset's class threshold and:

- Extend the estimated life or increase the value of the asset as per established thresholds defined in this document, or
- Increase the future service potential, (capacity or efficiency) of the asset, or
- Are for a new major fixture of a building (e.g. elevator, boiler, HVAC, roof), or
- For depreciated roads, the 'base' has been impacted by a recycle, reconstruction, or overlay.

The determination as to whether expenditures meet any of these factors shall be made by an evaluation of engineering design, physical condition, cost and other relevant factors.

*Alteration or Remodeling* of buildings costs to change the physical structure or arrangement of capital assets that do not extend the building's useful life shall not be capitalized.

*Maintenance* - expenditures that neither materially add to the value of property nor prolong its life, but merely maintains its original level of service or condition. Maintenance costs shall not be capitalized.

### **Construction in Progress**

Construction in Progress includes new construction or improvements to land, buildings or infrastructure that have not been physically completed or have not had all project costs processed by fiscal year-end and the final cost is expected to exceed \$100,000.

### **Depreciation**

Depreciation is the process of allocating the cost of depreciable capital assets over a period of time rather than incurring the entire cost as an expense in the year of acquisition. This process recognizes an asset's periodic cost of use and declining usefulness over time. Land, certain land improvements, and certain works of art and historical treasures are inexhaustible and are therefore not depreciated.

As a matter of policy, the Board has elected to adopt the straight-line method of depreciation. Unless clear evidence indicating that the expected consumption of an asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be applied as follows:

$$(\text{Asset Cost} - \text{Residual Value}) / \text{Estimated Useful Life in Years} = \text{Annual Depreciation Expense}$$

(The method for applying depreciation in the first year of service will be at the discretion of the Agency's Financial Officer.)

Residual value is the amount that can be anticipated to be recovered when the asset is no longer useful for its intended purpose. Useful life should approximate the time an asset will provide service to the Agency.

Capital assets that become fully depreciated and are still in use must remain in the financial capital accounts and identified within a capital asset system until they are disposed of.

**Asset Dispositions, Transfers, and Sales**

*Surplus* items are those that are no longer required by the Agency. These assets may be traded in for new assets, or classified as surplus for sale, or disposal. Any sale, donation, disposal, or dismantling of a capital asset must receive approval from the Executive Director.





# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

## **FRAUD REPORTING POLICY**

**Responsible Officer: Executive Director**

### **POLICY STATEMENT**

The Agency will investigate possible fraudulent activity or dishonest use of Agency resources by its employees and/or contract staff. Anyone found to have engaged in fraudulent activity is subject to disciplinary action, including dismissal and civil or criminal prosecution when warranted.

### **Confidentiality and Discretion**

Great care will be taken in dealing with suspected fraudulent activity to avoid:

- Violating a person's rights to due process,
- Making statements that could lead to claims of false accusations or other civil rights violations,
- Alerting suspected individuals that an investigation is underway.

The investigation may be discussed only with those individuals who have a legitimate need-to-know. The employee is considered innocent of all allegations unless, and until, the facts prove otherwise.

### **Reporting Suspected Fraud**

Agency employees and contract staff are expected to report good faith concerns about suspected fraud.

### **Acting in Good Faith**

Anyone filing a complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing that the information disclosed indicates a violation. Allegations that prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

### **Protection from Retaliation**

Retaliation against employees and contract staff for making good faith reports is prohibited. Employees and contract staff making good faith reports of suspected misconduct should feel safe and protected from retaliation. The Agency will provide appropriate support to reporting employees and contract staff to protect against retaliation and respond to concerns of retaliation or unfair treatment linked to the employee's reporting.

### **BACKGROUND**

The Agency is committed to the highest standards of moral, legal, and ethical behavior. All Agency officers and staff members have a responsibility for the stewardship of the Agency's resources. Internal controls are intended to protect the Agency's assets and interests by detecting or preventing improper activities; however, there are no absolute safeguards against willful violations of laws, regulations, policies or procedures.

The Agency is required to report any suspected theft, loss, misuse, or inappropriate action involving Agency funds, equipment, supplies, or other assets to the chairperson of the Board.

## **APPLICABILITY**

This Policy applies to all Agency employees, contract staff and officers.

## **DEFINITIONS**

**Fraud** - encompasses an array of irregularities and illegal acts characterized by intentional deception or theft which produces a loss or misuse of resources or property. It can be perpetrated for the benefit of individuals or the agency, or may be detrimental to the Agency. Fraud may be committed by persons outside, as well as inside the Agency. Actions constituting fraud include but are not limited to:

- forgery or alteration of a check, bank draft, account or any Agency document;
- misappropriation of funds, supplies or other assets;
- impropriety in the handling or reporting of money or financial transactions;
- disclosing confidential and proprietary information to outside parties;
- accepting or seeking bribes or items for personal gain from contractors, vendors or persons seeking to provide services/material to the Agency;
- destruction, removal or inappropriate use of records, furniture, fixtures, and equipment; and,
- falsification of research results.

## **RESPONSIBILITY**

### **All Employees and Contract Staff**

Report good faith concerns about fraudulent activity. Be truthful and cooperative in investigations of alleged wrongdoing.

### **Managers**

Maintain confidentiality, notify the Executive Director and Treasurer and other appropriate individuals, support reporting employees and protect them against retaliation.

### **Executive Director**

Gather information and determine if a formal investigation is required.

## **PROCEDURE**

### **Reporting Fraud**

Employees are encouraged to attempt to resolve their concern at the most local level, by communicating their concerns to their supervisor or other appropriate contact person. If an employee feels uncomfortable addressing their concerns at the local level, they may make their report directly to any of the following:

- Chairperson of the Board
- Executive Director
- Treasurer
- General Counsel

When reporting fraudulent activity, provide as much detail as possible. The report may be submitted anonymously, however providing your contact information may be helpful if questions arise. All information will be treated as confidential to the extent permitted by law.

### **Initial Investigation**

Anyone receiving a report of fraudulent activity should notify the Executive Director and/or the Chairperson of the Board. The Executive Director or appropriate Agency officer will consider the allegations and gather additional information to determine, in consultation with another appropriate Agency officer, whether a formal inquiry is warranted.

If the reported concern is minor and the solution is straightforward without the need for substantial investigation, the Executive Director or appropriate Agency officer will work with an appropriate manager or Agency officer to develop and implement a solution, protect the rights of the parties involved, and maintain documentation.

### **Formal Inquiry**

When a formal inquiry is warranted, a Fraud Investigation Team will be formed and may include the Chairperson of the Board, Executive Director, Treasurer, Legal Counsel and/or others as deemed appropriate.

Depending on the nature and severity of the allegation, the Executive Director or appropriate Agency officer will review the matter with the Chairperson of the Board and keep him/her apprised of the investigation as necessary.

The Fraud Investigation Team will determine:

- When notification is given to the employee against whom the allegation has been made. In most cases, the notice will be given to the employee or contract staff person by the Executive Director or appropriate Agency officer. Upon notification receipt, the suspected employee or contract staff person shall be encouraged to provide documentation or other evidence to support his/her views.
- If a suspected employee or contract staff person should be suspended or temporarily reassigned in accordance with law and/or the appropriate agreement.
- In conjunction with the Executive Director or Chairperson of Board, if it is necessary to safeguard all records relating to the alleged activity by removing them from the suspected person's custody.
- The final course of action, in consultation with the Executive Director or appropriate Agency officer. The decision will be reviewed and communicated by the Executive Director or appropriate Agency officer to the supervisor and the employee after it has been reviewed by the Chairperson of the Board.

The Executive Director or appropriate Agency officer, in consultation with Legal Counsel, will determine and coordinate any legal arrangements between the Agency or City or County or State and the employee/contractor or his/her attorney.

The Executive Director or appropriate Agency officer will also ensure that appropriate reports are completed and distributed as required.



# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

## **PURCHASING POLICY**

**Responsible Officer: Executive Director**

### **PURPOSE AND POLICY STATEMENT**

#### **Purpose:**

The purpose of this Purchasing Policy is to provide the Agency a means of assuring continuity and uniformity in its purchasing practices; to define the responsibilities of the various staff of the Agency; and to provide related procedures.

This policy covers the appropriate procedures for purchasing materials, supplies and services, including professional services. This policy does not address public bidding procedures for public works projects or the acquisition of real property and necessary appurtenances. Such procedures are provided in the Public Contract Code and/or other provisions of Federal and state law.

#### **Policy Statement:**

The policies and procedures contained herein are hereby promulgated by the Board's approval of this Purchasing Policy. The Executive Director is charged with the responsibility and authority for coordinating and managing the procurement of the Agency's materials, supplies, and services. The procedures outlined herein are to be followed by the Executive Director and all Agency staff when procuring materials, supplies, and services, including professional services.

### **GIFTS AND UNAUTHORIZED PURCHASES**

#### **Gifts and Special Considerations:**

Employees and contract staff of the Agency shall not procure or assist in procuring any materials, supplies, services or equipment for the personal use of any employee, officer or official of the Agency.

Agency employees, officers, contractors or officials, by virtue of position, are not entitled to any special consideration from vendors and merchants in their personal affairs. Nor are they to attempt to procure materials for the personal use of any other person.

Agency employees or contract staff shall not solicit or accept gifts, entertainment, or anything more than \$50.00 in value from vendors or others. Examples of acceptable gifts might include pencils, scratch pads, or other advertising supplies.

#### **Unauthorized Purchases:**

No purchases shall be made by Agency employees or contractors without prior written authorization by the Executive Director. This limitation does not apply to professional services

contractors where the contract (including scope of work) provides for purchases of materials and supplies. Authorization by the Executive Director or his or her designee must be given to the purchaser at or before the time goods and services are ordered, if at all; "after-the-fact" authorization for completed work or material received shall be ineffective. Employees or contractors making purchases on behalf of the Agency shall make these limitations on their authority to deal known to vendors. Purchases made without prior written authorization by the Executive Director are void and not considered an obligation of the Agency. An employee or contractor who makes an unauthorized purchase on behalf of the Agency may be held liable for costs associated with canceling the purchase contract.

### **RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR**

The Executive Director has the following general responsibilities for purchasing:

1. Coordinate Agency requisitions by delegating the responsibilities outlined below to Agency staff as appropriate and providing the needed authorization to Agency staff as appropriate.
2. Identify, evaluate and utilize purchasing arrangements which best meet the needs of the Agency (e. g., cooperative purchases, blanket purchase orders, contractual agreements, etc.) The Agency is encouraged to participate in purchases and contracts established by its member agencies and other political jurisdictions.
3. Assist with research and recommendations in developing specifications, to review specifications for completeness of information, and for open and competitive language.
4. Coordinate and establish vendor relations, locate vendors, and evaluate vendor performance, bids, and responses.
5. Recommend revisions to purchasing procedures when necessary and to keep informed of current developments in the field of purchasing.
6. Act as the Agency's agent in the disposal and transfer of surplus materials.
7. Strive to obtain the highest quality goods consistent with operational needs, from the most responsible bidder where competitive bidding is required, offering a price that is the most advantageous to the Agency.

The Executive Director or his/her designee shall:

1. Be charged with the responsibility and authority for coordinating and managing the procurement of the Agency's materials, supplies, and services.
2. Negotiate, purchase and/or contract for the Agency, the needed quantity in equipment, supplies and services from the lowest responsible bidder.
3. Promote full and open competition on purchases where appropriate.
4. Monitor and ensure (or cause to be ensured) that no single professional services provider/consultant/vendor is paid more than \$50,000 without prior Agency authorization as further described herein.
5. Revise and maintain these policies and procedures as needed to ensure code compliance and protect the interests of the Agency.

### **PUBLIC WORKS PROJECTS UNDER THE PUBLIC CONTRACT CODE**

As noted above in the statement of purpose, this policy is not intended to guide the Agency with respect to public bidding for public works projects pursuant to the Public Contract Code. The Executive Director will consult with Agency counsel on required procedures for public works projects.

## **GENERAL RESPONSIBILITIES OF AGENCY STAFF**

Agency staff shall:

1. Monitor and inform the Executive Director of any problems with vendor relations, shipping, (e.g., damaged goods, late delivery, wrong items delivered, incorrect quantity delivered, etc.) and any situations and/or concerns which should be brought to his/her attention allowing him/her to follow-up and resolve the problem.
2. Anticipate requirements sufficiently in advance, allowing the Executive Director adequate time to obtain materials, supplies, and services in accordance with the best purchasing practices.
3. Provide detailed and accurate specifications to ensure materials, supplies, and services obtained are consistent with expectations and requirements.
4. Prepare contracts and task orders in accordance with instructions.
5. Minimize emergency and sole source purchases and when such purchases are necessary, fully comply with this policy, including obtaining Board and Executive Director approval whenever necessary.
6. Make written recommendations, as required, for the lowest responsible bidder/proposer based upon specification criteria; as well as, perform reference checks to assist in determining lowest responsible bidder/proposer.

## **VENDOR RELATIONS**

1. It is to the Agency's advantage to maintain and promote good relations with suppliers. The Agency's vendor relations reflect the public image of the Agency organization. Agency staff is responsible for promoting fairness, integrity, courtesy, and goodwill in their vendor relations.

## **GENERAL PURCHASING PROCEDURES**

The following procedures are hereby established to provide efficient methods for purchasing materials, supplies, and services (excluding Professional Services, which are addressed separately in this policy).

1. For repetitive supplies (e.g., frequent purchases of office supplies, materials, etc.), the Agency shall use its best efforts to utilize the purchasing procedures and powers of the City of Yuba City, or other member agencies.
2. Bidding Limits -Supplies and Technical/Maintenance Services:
  - a. Bidding limits are "per order" and are not to be split to circumvent the specified limits.
  - b. Bidding limits refers to supplies and technical/maintenance services and do not include professional/consultant services.

The bidding limits are as follows:

UP TO \$5,000 (\$0.01 up to \$5,000.00)

- Bidding is not required
- Competitive quotations are not required, although they are encouraged whenever possible.



\$5,000.01 up to \$50,000.00

Contract and/or pre-approved quotation are the purchasing methods to be used.

- Agency staff is to obtain at least three (3) competitive quotations from vendors.
- Sole source written justification is required if competitive quotes are not used.
- Formal bidding is not required
- Records of the written quotations or sole source justification are to be forwarded to the Executive Director for approval prior to the issuance of contract. These records will be maintained along with a copy of the contract / approved quotation as a public record.
- Requires review by the Financial Officer to ensure acquisition is within the approved budget.
- Items purchased under this method are not to be split in order to obtain equipment, materials or services that exceed the \$50,000.00 limit.

OVER \$50,000.00

- Agency staff must obtain competitive quotations.
- Competitive bidding is required unless otherwise authorized in these policies and procedures.
- Sole source written justification can be used in certain circumstances but requires Board approval.
- Formal bid process is required (see below).
- Requires review by the Financial Officer to ensure acquisition is within the approved budget.
- Board approval is required for all purchases or contracts over \$50,000.00.

3. Formal Bids: Formal quotations are written bids or proposals requiring a formal closing time/date. Public notices are posted on a public bulletin board, on the Agency website, and/or may be advertised in the newspaper if appropriate. Public notice advertisements requesting invitations for bid will be published in the Appeal Democrat at least two (2) times and posted on the Agency website. The first insertion in the newspaper must be at least ten (10) days prior to the opening of the bids. Formal bids are opened in public and formal proposals are made public upon execution of a signed contract. The formal proposal process may be used in procurements involving complicated and performance-type specifications that may require involved negotiations or communications with vendors to clarify proposals submitted. The proposal process should be utilized in negotiated procurements or those procurements where the answer to a certain approach or a specific item necessary to satisfy the Agency's needs is unknown. All purchases over \$50,000.00 require a formal process.
4. Late Formal Bids/Proposals: Formal bids over \$50,000 submitted after the designated closing time shall be returned as unacceptable. Due to the confidential nature of the proposal process, late proposals shall only be accepted upon recommendation by the Executive Director or his/her designee.
5. Sole Source Purchases: When competitive quotations for goods and services are not possible, such purchases shall be made through negotiated procurement and

coordinated through the Executive Director. Sole source includes emergency purchases and require Board approval.

6. Justification: Whenever the bidding/proposal process is dispensed with or the lowest bidder is not used, recommendation and justification for doing so shall be in writing and maintained by the Executive Director.

7. Lowest Responsible Bidder:

- a. When a bidding process is used, bids will be awarded to the responsive bidder who submits the lowest responsible bid that is most advantageous to the Agency. The term "lowest responsible bidder" as used in the Agency's bidding documents shall mean the lowest bidder whose offer best responds in quality, fitness and capacity to the requirements of the proposed work or usage.
- b. Sellers, vendors, suppliers, and contractors of supplies and equipment who maintain places of business located within the limits of the Agency shall be given preference if quality, price, and service are equal.
- c. In determining the "lowest responsible bidder", the following elements shall be given consideration (in addition to price):
  - i. The ability of the product offered to provide the quality, fitness and capacity for the required usage.
  - ii. The ability, capacity and skill of the bidder to perform the contract or provide the service required.
  - iii. The character, integrity, reputation, judgment, experience and efficiency of the bidder, particularly with reference to past purchases by the Agency.
  - iv. Whether the bidder can perform the contract and/or deliver the materials, supplies, and services within the time required.
  - v. The quality of performance and/or quality of products provided in previous contracts or services.
  - vi. Other information secured and having a bearing on the decision to award the contract.
  - vii. Continuity of service.
- d. Responsiveness:

A responsive bid is one which is in substantial conformance with the requirements of the invitation to bid, including specifications and the Agency's contractual terms and conditions. Bidders who substitute terms and conditions or who qualify their bids in such a manner as to nullify or limit their liability may be considered a non-responsive bidder.

Conformance with the requirements of the invitation to bid may also include, but not be limited to, completion of forms, inclusion of references and attachments, and completion of required responses.
- e. Rejection of Bids/Proposals: The authority to reject is based on the authority to award. The Agency reserves the right: (1) to reject any or all bids or any part thereof and (2) to waive any informalities and/or negotiate minor deviations to the bid, with the successful firm. The Agency's decision shall be final.
- f. Tie Bidders: If two (2) or more bids are received which are in ALL respects equal, the Agency may award to the local vendor. If both are local vendors or none are local vendors, the Agency may draw lots, re-bid, or award may be made to the one deemed in the best interest of the Agency.



## PROCEDURES FOR "PROFESSIONAL SERVICES" CONTRACTS

Definition: Those services by independent contractors such as legal, engineering, programming, planning, environmental, economic, financial, testing, specialized temporary employee services, accounting, surveying, landscape architecture, advertising, design, etc., are to be considered to be "Professional Services." This may also include services requiring peculiar or other specialized abilities and under State law do not require competitive bidding.

1. Solicitation of Proposals: Solicitation of professional service proposals is the responsibility of the Executive Director or his/her designee.
2. Selection of Consultant: Contracts negotiated by the Agency for professional services will be based on demonstrated competence, professional qualifications for the services required, availability, and fair and reasonable cost. Competitive bidding is encouraged whenever possible. However, it is not mandatory.
3. Contracts/Agreements: All professional service contracts shall use a contract for professional services as provided and/or reviewed by Agency Counsel. Professional service contracts/agreements over \$50,000 require approval by the Agency Board.
4. Dollar Limits — Professional/Consultant Services: Specified dollar limits are per provider per fiscal year and are not to be split to circumvent the determined limits.
5. Contracts of \$50,000 or Less: Agency staff should, whenever possible, contact three (3) consultants/firms, and select the most qualified firm based on demonstrated competence, professional qualifications, availability, and fair and reasonable cost. Written justification shall be provided regarding the selection of the successful proposer. The Executive Director is authorized to sign professional service contracts totaling \$50,000 or less without approval by the Board.
6. Contracts Over \$50,000: The Executive Director shall solicit written proposals and negotiate with a minimum of three (3) consultants/firms, whenever possible. Selection shall be based on demonstrated competence, professional qualifications, availability, and fair and reasonable cost. When firms submitting proposals have been previously interviewed by the Agency, selection may be made based on the Agency's previous knowledge of the firm's qualifications and experience. Professional service contracts over \$50,000 require Board approval.
7. Agency Staff Responsibilities:
  - a. Prepare specifications, scope of work.
  - b. Solicit, review and select qualified consultant/firm.
  - c. Provide written documentation justifying selection of the successful consultant/firm.
  - d. Prepare a professional services contract.
  - e. Submit the contract to Agency Counsel for review and approval, if applicable.
  - f. Secure and review required insurance certificates for conformance to Agency contract requirements.
  - g. If more than \$50,000 obtain Board approval.
  - h. Secure all necessary signatures on the contract.

- i. Compile all exhibits/attachments described or referenced in the contract.
  - j. Submit a copy of the signed contract complete with exhibits and attachments to the Clerk of the Board.
  - k. Provide the consulting firm a signed copy of the contract.
8. When it is in the best interest of the Agency to negotiate an extension of an existing contract for professional services, based upon satisfactory performance, such negotiated price must be fair and reasonable. This shall also apply to products or services purchased through prior recent bidding.

## **SPECIFICATIONS**

It is the responsibility of the relevant Agency staff person to provide detailed, accurate specifications when requisitioning supplies and services. Accurate specifications are essential for effective bidding. Therefore, specifications should be clear, accurate descriptions of the materials, supplies, or services required. The Executive Director shall have the final determination as to whether a vendor's proposed product or service is sufficient to meet the specifications described for the Agency's need.

## **PROTEST PROCEDURE AND ADMINISTRATIVE APPEAL**

*(Does not apply to public works projects pursuant to the Public Contract Code)*

### **Protest Procedure:**

Any vendor wishing to file a protest prior to bid opening concerning the specifications or bid procedure must do so in writing. This written protest must be received by the Clerk of the Board no later than four (4) working days prior to bid opening. If a protest that is received cannot be resolved by the designated time of the bid opening, the Executive Director may delay the bid opening until the protest is resolved.

If anyone wishes to protest something that only became evident after the bid opening, they must file the protest in writing. This written protest must be received by the Clerk of the Board no later than five (5) working days after the Agency notifies all bidders of the contract award decision.

A protest bidder shall comply with the following procedures. Failure to comply in the manner prescribed shall automatically relieve the Agency from accepting that protest.

1. The alleged aggrieved protesting bidder must file in writing to the Executive Director the exact reason for the protest.
2. The written document containing the reasons for protest must be received by the Executive Director, not later than four (4) working days prior to the bid opening or within five (5) working days after the award decision.
3. The Executive Director shall review the written protest and within five (5) working days after receipt of the written protest and issue a decision in writing. The decision shall state the reasons for the action taken as well as informing the protesting bidder the right of administrative appeal.
4. A decision rendered by the Executive Director under paragraph "Protest Procedure" shall be final and conclusive. If the alleged aggrieved protesting bidder has complied

Dated: 4/26/12

with the "Protest Procedures" and the value of the contract is greater than \$50,000 they shall have the right to commence a formal administrative appeal.

**Formal Administrative Appeals Procedure:**

The Board is the approving authority for formal appeals for the Agency. A request for a formal administrative appeal must be written and submitted to the Clerk of the Board within ten (10) working days after the aggrieved bidder is notified of the Executive Director's decision. A written decision will be issued within ninety (90) days after receipt of the written appeal. The appeal decision made by the Board is final.



# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

## **BUSINESS DISASTER, RESUMPTION & PREPAREDNESS PLAN**

**Responsible Officer: Executive Director**

### **POLICY STATEMENT**

The Agency will ensure that it can maintain effective operations in the event that its facilities and resources, both physical and technological, become compromised and/or unusable.

### **BACKGROUND**

The Agency relies heavily on its technological resources to perform its day-to-day operations and tasks, many of which are time sensitive given the nature of the schedule for implementing its projects. Therefore, it is in the Agency's best interest to provide for business continuity as provisioned in this document.

The Agency strives to maintain much of its information in an electronic format. The Agency utilizes the physical and technological resources of its contractors through its service contracts.

### **RESPONSIBILITY FOR BUSINESS CONTINUITY**

#### **Employees and Contract Staff**

The majority of day-to-day operations are handled by contract staff, so the responsibility for ensuring the integrity and availability of information generated and utilized on behalf of the Agency is the contractors' responsibility.

### **PROVISION FOR CONTINUITY**

#### **Agency Technology Resources**

The Agency's electronic information systems, including all computers, file storage devices and services, shall be utilized in a manner that ensures that all critical Agency operational and project information is duplicated and maintained at an offsite location. This can be achieved in a number of different ways; the ultimate solution utilized by the Agency will be determined at the discretion of the Executive Director through consultation with technology industry professionals.

#### **Contract Staff Technology Resources**

Contract staff must ensure that its electronic information systems include duplicate copies of critical Agency operations and project materials; paper copy materials must be located at more than one physical location.

This can be achieved in a number of different ways; the ultimate solution utilized by the contractor will be chosen at the discretion of contractor. The responsibility to maintain this solution shall be at no additional cost to the Agency.

**Sutter Butte Flood Control Agency  
General Liability Insurance  
- Attachment 8**

**COVERAGE SUMMARY FOR  
CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I PROGRAM**

<b>COVERED PARTY</b>	Sutter Butte Flood Control Agency JPA
<b>COVERAGE AFFORDED BY</b>	CSAC Excess Insurance Authority (CSAC EIA) with reinsurance and excess insurance provided by Insurance Company of the State of Pennsylvania
<b>MEMORANDUM NUMBER</b>	EIA-PE 08 EL-72
<b>EXCESS POLICY NUMBER</b>	6543169
<b>COVERAGE PERIOD</b>	July 1, 2008 to July 1, 2009
<b>COVERAGE PROVIDED</b>	Municipal Excess Liability – Occurrence Form Memorandum of Coverage <ul style="list-style-type: none"><li>• Bodily Injury</li><li>• Personal Injury</li><li>• Property Damage</li><li>• Automobile Liability</li><li>• Contractual Liability</li><li>• Public Officials Errors &amp; Omissions Liability</li><li>• Employment Practices Liability</li></ul>
<b>LIMIT</b>	<u>Authority's Limit of Liability</u> Pool Layer: \$5,000,000 per occurrence or wrongful act (difference between \$5,000,000 and the member's retained limit)  Reinsurance Layer: \$8,000,000 per occurrence or wrongful act excess of \$5,000,000  Excess Insurance Layer: \$2,000,000 per occurrence or wrongful act excess of \$13,000,000  Occurrence and aggregate limits apply separately by layer per member
<b>SELF INSURED RETENTION</b>	\$ 100,000

**NOTE: THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT AMEND, EXTEND OR ALTER THE POLICY IN ANY WAY. PLEASE REFER TO THE POLICY FORM FOR COMPLETE COVERAGE AND EXCLUSION INFORMATION.**



**MAJOR EXCLUSIONS**  
(Including but not limited to)

- Airports/aircraft
- Health care professional liability (limited)
- Failure to supply
- Nuclear material
- Dam failure
- Asbestos
- Punitive damages
- ERISA
- Inverse condemnation (limited)
- Pollution (limited)
- Investment risk (sub-limit of \$1,000,000)
- Subsidence
- Care, custody and control
- Violation of economic or trade sanctions
- Strip search (limited)
- Violation of communication or information law

**ANNUAL PREMIUM**

\$ 20,943 (inclusive of all layers and all fees)

**BROKER**

**ALLIANT INSURANCE SERVICES, INC.**  
Gordon DesCombes, Senior Vice President  
Nazie Arshi, First Vice President  
Tom E. Corbett, Vice President  
Esther Ruvalcaba, Account Representative

**NOTE: THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT AMEND, EXTEND OR ALTER THE POLICY IN ANY WAY. PLEASE REFER TO THE POLICY FORM FOR COMPLETE COVERAGE AND EXCLUSION INFORMATION.**

Alliant Insurance Services, Inc. • 1301 Dove Street • Suite 200 • Newport Beach, CA 92660  
PHONE (949) 756-0271 • [www.alliantinsurance.com](http://www.alliantinsurance.com) • License No. 0C36861

ALLIANT EMBRACES A POLICY OF TRANSPARENCY WITH RESPECT TO ITS COMPENSATION FROM INSURANCE TRANSACTIONS. DETAILS ON OUR COMPENSATION POLICY, INCLUDING THE TYPES OF INCOME THAT ALLIANT MAY EARN ON A PLACEMENT, ARE AVAILABLE ON OUR WEBSITE AT [WWW.ALLIANTINSURANCE.COM](http://WWW.ALLIANTINSURANCE.COM). FOR A COPY OF OUR POLICY OR FOR ANY INQUIRIES REGARDING COMPENSATION ISSUES PERTAINING TO YOUR ACCOUNT YOU MAY ALSO CONTACT US AT: ALLIANT INSURANCE SERVICES, INC., ATTENTION: GENERAL COUNSEL, 701 B STREET, 6TH FLOOR, SAN DIEGO, CA 92101.

ANALYZING INSURERS' OVER-ALL PERFORMANCE AND FINANCIAL STRENGTH IS A TASK THAT REQUIRES SPECIALIZED SKILLS AND IN-DEPTH TECHNICAL UNDERSTANDING OF ALL ASPECTS OF INSURANCE COMPANY FINANCES AND OPERATIONS.

INSURANCE BROKERAGES SUCH AS ALLIANT INSURANCE TYPICALLY RELY UPON RATING AGENCIES FOR THIS TYPE OF MARKET ANALYSIS. BOTH A.M. BEST AND STANDARD AND POOR HAVE BEEN INDUSTRY LEADERS IN THIS AREA FOR MANY DECADES, UTILIZING A COMBINATION OF QUANTITATIVE AND QUALITATIVE ANALYSIS OF THE INFORMATION AVAILABLE IN FORMULATING THEIR RATINGS. A.M. BEST HAS AN EXTENSIVE DATABASE OF NEARLY 6,000 LIFE/HEALTH, PROPERTY CASUALTY AND INTERNATIONAL COMPANIES. YOU CAN VISIT THEM AT [WWW.AMBEST.COM](http://WWW.AMBEST.COM).

FOR ADDITIONAL INFORMATION REGARDING INSURER FINANCIAL STRENGTH RATINGS VISIT STANDARD AND POOR'S WEBSITE AT [WWW.STANDARDANDPOORS.COM](http://WWW.STANDARDANDPOORS.COM)

TO LEARN MORE ABOUT COMPANIES DOING BUSINESS IN CALIFORNIA, VISIT THE CALIFORNIA DEPARTMENT OF INSURANCE WEBSITE AT [WWW.INSURANCE.CA.GOV](http://WWW.INSURANCE.CA.GOV)





**CSAC EXCESS INSURANCE AUTHORITY**

**GENERAL LIABILITY I PROGRAM  
MEMORANDUM OF COVERAGE  
DECLARATIONS**

- ITEM 1: **MEMBER:** Sutter Butte Flood Control Agency JPA
- ITEM 2: **MEMORANDUM PERIOD:** From July 1, 2008 to July 1, 2009, 12:01 a.m. local time of the Member as stated herein.
- ITEM 3: **MEMORANDUM NUMBER:** EIA-PE 08 EL-72
- ITEM 4: **MEMBER'S RETAINED LIMIT:** \$ 100,000

Ultimate net loss as the result of any one **occurrence** because of **personal injury** or **property damage** or any one **wrongful act** because of **public officials errors and omissions** or **employment-related injury**, or any combination thereof.

**ITEM 5: AUTHORITY'S LIMITS OF LIABILITY:**

- a. **Pool Layer:** \$ 4,900,000

Ultimate net loss excess of the Member's retained limit as the result of any one **occurrence** because of **personal injury** or **property damage** or any one **wrongful act** because of **public officials errors and omissions** or **employment-related injury**, or any combination thereof.

As respects **completed operations hazard**, ultimate net loss excess of the Member's retained limit is limited to \$ 4,900,000 as a result of any one **occurrence** and as a result of all **occurrences** occurring during the Memorandum Period.

- b. **Excess Reinsurance Layer:** \$ 8,000,000

Ultimate net loss excess of the Pool Layer and Member's retained limit as the result of any one **occurrence** because of **personal injury** or **property damage** or any one **wrongful act** because of **public officials errors and omissions** or **employment-related injury**, or any combination thereof.

As respects **completed operations hazard**, ultimate net loss, excess of \$5,000,000 is limited to \$ 8,000,000 as a result of any one **occurrence** and as a result of all **occurrences** occurring during the Memorandum Period.

- ITEM 6: **RISK PREMIUM:** \$ 14,532
- ITEM 7: **FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:** EIA Excess Liability MOC 10/1/06, Endorsement No. U-1, U-2, U-3, U-4, U-5, U-6

Countersigned by: Michael J. H.  
Authorized Representative  
CSAC Excess Insurance Authority

Date: March 02, 2009

## **CSAC EXCESS INSURANCE AUTHORITY EXCESS LIABILITY PROGRAM MEMORANDUM OF COVERAGE**

In consideration of the payment of the premium, if paid, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this Excess Liability Program Memorandum Of Coverage (Memorandum), the CSAC Excess Insurance Authority (Authority) agrees with the Member as follows:

### **COVERAGE AGREEMENT**

The Authority will reimburse the **covered party** for **ultimate net loss** in excess of the Retained Limit hereinafter stated which the **covered party** shall become legally obligated to pay as **damages** by reason of liability imposed by law or liability assumed by contract because of:

Coverage A. **Personal injury** or

Coverage B. **Property damage**

To which this Memorandum applies, caused by an **occurrence**;

Coverage C. **Public officials errors and omissions** or

Coverage D. **Employment-related injury**

To which this Memorandum applies, caused by a **wrongful act**.

### **DEFENSE AND SETTLEMENT COSTS**

After the amount of the **covered party's** Retained Limit has been exhausted by payment of judgments, settlements and/or **defense costs**, the Authority will reimburse the **covered party** for **excess defense costs** incurred by the **covered party**. The Authority's liability for **excess defense costs** is, subject to, and not in addition to, the Authority's Limit of Liability.

The Authority shall have the right, but not the duty, to associate itself, at its own cost, with the **covered party** in the control, investigation, defense or appeal of any claim or proceeding which, in the opinion of Authority, is or may be covered by the Memorandum. The **covered party** shall fully cooperate in all matters pertaining to such claim or proceeding.

No claim shall be settled for an amount in excess of the **covered party's** Retained Limit without the prior written consent of the Authority.

### **RETAINED LIMIT - THE AUTHORITY'S LIMIT OF LIABILITY**

Regardless of the number of (1) **covered parties** under this Memorandum, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on

account of **personal injury, property damage, public officials errors and omissions** or **employment-related injury**, the Authority's liability is limited as follows:

- A. With respect to **personal injury, property damage, public officials errors and omissions, employment-related injury** or any combination thereof, the Authority's liability shall be only for the **ultimate net loss** in excess of the Retained Limit as specified on the Declarations as the result of any one **occurrence** or **wrongful act**, and then for an amount not exceeding the Authority's Limit of Liability specified on the Declarations as the result of any one **occurrence** or **wrongful act**.
- B. For the purpose of determining the limit of the Authority's liability, as respects coverages A and B, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**. For the purpose of determining the limit of the Authority's liability, as respects coverages C and D, all **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**.
- C. **Public officials errors and omissions** or **employment-related injury** taking place over more than one Memorandum period shall be deemed to have taken place during the last Memorandum period and only that limit shall apply.

#### **MEMORANDUM PERIOD, TERRITORY**

This Memorandum applies to **personal injury, property damage, public officials errors and omissions** or **employment-related injury** which occurs anywhere in the world during the Memorandum period.

#### **COVERED PARTY, COVERED PERSONS OR ENTITIES**

- A. The Member
- B. Those individuals who were or are now elected or appointed officials of the Member, whether or not compensated (including volunteers), including Members of the Member's governing body or any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member
- C. All districts or agencies which are named on this Memorandum and all special districts for which the Member's board of supervisors sits as the governing board
- D. Past or present employees of the Member or other covered entity, whether or not compensated, (including volunteers), while acting for or on behalf of the Member or other covered entity
- E. Notwithstanding sub-paragraphs (A) through (D) above with respect to who is a covered party, the determination and findings made in good faith by the Member pursuant to California government code section 995.2 or any other provision of law

shall be conclusive and binding on the Authority and all other persons for the purposes of coverage under the Memorandum.

F. 1937 Act Retirement Association of the Member County and the San Luis Obispo County Pension Trust

As respects the above covered parties, this Memorandum of Coverage does not cover the **Breach of Fiduciary Duty** which means:

1. Violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by:
  - a.) The Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto; or
  - b.) The common or statutory law of the United States of America, or of any State or other jurisdiction therein; and
2. Negligent acts, errors or omissions in **Administration**.

**Administration** as used herein shall mean:

- a.) Giving counsel to participants and beneficiaries with respect to a **plan**
- b.) Interpreting a **plan**
- c.) Providing or failing to provide benefits under a **plan**
- d.) Handling the records connected with a **plan**
- e.) Effecting enrollment, termination or cancellation of participants under a **plan**

**Plan** as used herein shall mean the written instrument which sets forth specific benefits and eligibility under a named trust.

## EXCLUSIONS

As respects **ultimate net loss, defense costs, and excess defense costs**, this Memorandum does not apply:

- A. To any obligation for which any **covered party** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law
- B. To bodily injury to any employee of any **covered party** arising out of and in the course of his/her employment by such **covered party**; but this exclusion does not apply to **employment-related injury** or liability assumed by the **covered party** under any written contract
- C. To injury to or destruction of (1) property owned by a **covered party**, or (2) property rented to or leased to the **covered party** where the **covered party** has assumed liability for damage to or destruction of such property unless the Member would have been liable in the absence of such assumption of liability, or (3) **aircraft** or **watercraft** in the care, custody or control of any **covered party**
- D. As respects liability assumed by the **covered party** under any contract:

1. To any claim, judgment or agreement from any arbitration proceeding wherein the Authority is not entitled to exercise with the **covered party**, the **covered party's** rights in the choice of arbitrators, and in the conduct of such proceedings
  2. To any obligation for the rendering or failure to render professional services for the **covered party**, if the indemnitee of the **covered party** is an architect, engineer or surveyor, arising out of:
    - a.) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications;
    - b.) The giving or the failure to give directions or instructions by the indemnitee, the indemnitee's agents or employees, provided such giving or failure to give is the primary cause of **personal injury** or **property damage**;
- E. To **personal injury** and **property damage** arising out of the ownership, maintenance, loading or unloading, use or operation of any:
1. **Aircraft**
  2. Airfields
  3. Runways
  4. Hangars
  5. Buildings or other properties in connection with aviation activities

This exclusion shall not apply, however, (1) to liability arising out of the ownership, operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned, or operated by **covered party** and (2) **non-owned aircraft** operated by or on behalf of the **covered party**;

- F. To liability arising out of or in connection with the operation of any hospitals, clinics or established health care facilities owned or operated by the Member due to:
1. The rendering of or failure to render:
    - a.) Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith
    - b.) Any service or treatment related to physical or mental health or any other professional service; or;
    - c.) any cosmetic or tonsorial service or treatment;
  2. The furnishing of or dispensing of drugs or medical, dental or surgical supplies or appliances.

This exclusion shall not apply, however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or preventative health services related to: alcoholism, drug abuse, well child healthcare, California children services, immunizations, sexually transmitted diseases; tuberculosis, and family planning.

Notwithstanding such exceptions to this exclusion as are set forth immediately above, however, if any collectible insurance or other coverage, including but not limited to coverage afforded by any other CSAC Excess Insurance Authority program, is available to the **covered party**, for liability for loss, damage or injury arising from the operation of any clinic or other established health care facility (whether on a primary, excess or contingent basis), any coverage afforded hereunder shall apply in excess of, and shall not contribute with, such insurance or other coverage; provided that this clause does not apply, with respect to excess insurance purchased specifically, to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the Limit of Liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations

- G. To liability arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name regardless of whether such claims are made directly against the **covered party** or by virtue of any agreement entered into by or on behalf of the **covered party**

This exclusion does not apply to direct physical injury to or direct destruction of third party tangible property, caused by an **occurrence**, even though a legal theory upon which a claimant seeks recovery is the principle of inverse condemnation.

- H. To liability arising out of the failure to provide an adequate supply of fuel, water or electricity; however, this exclusion applies only if such failure to provide results from any decision by the Member's governing body with respect to (1) obtaining such fuel, water or electricity, or (2) allocating such fuel, water or electricity among the users thereof

- I. To **property damage** arising out of **subsidence**

- J. To liability arising out of any transit authority, transit system or public transportation system owned or operated by any **covered party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped persons transportation.

- K. To liability arising out of the hazardous properties of **nuclear material**

- L. To liability arising out of the contamination of the environment by pollutants introduced at anytime into or upon the environment. This exclusion applies whether the contamination is introduced into the environment intentionally,

accidentally, gradually or suddenly, and whether the **covered party** or any other person or organization is responsible for the contamination.

Unless caused by any of the **covered party's** property that has been discarded, dumped, abandoned, or thrown away, this exclusion shall not apply with respect to:

1. Violent breaking open or explosion of any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator
2. Fire, lightning, or windstorm damage to any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator
3. Collision, overturning or upset of any vehicle, railroad vehicle or mobile equipment
4. Unintended fire, lightning or explosion not otherwise specified under 1, 2, or 3 above

It is further agreed that this exclusion does not apply to the actual, alleged or threatened discharge, dispersal, release or escape of pollutants if:

- a.) It was accidental and was neither expected nor intended by the **covered party**; and
- b.) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this Memorandum; and
- c.) Its commencement became known to the Member within ten days; and
- d.) Its commencement was reported in writing to the Authority within thirty-one days of becoming known to the Member; and
- e.) Reasonable effort was expended by the Member to terminate the situation as soon as conditions permitted.

Notwithstanding the foregoing this Memorandum shall not apply to any claim or claims relating to:

- a.) Any liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants, whether or not any of the foregoing are or should be performed by the **covered party** or by others
- b.) Contamination includes any unclean, unsafe or unhealthful condition either actual or potential, which arises out of the presence in the environment of any pollutant, whether permanent or transient



- c.) Environment includes land, bodies of water, underground water or water table or aquifer, the atmosphere and any other natural feature of the earth, whether or not altered, developed or cultivated
- d.) Pollutants include smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal pollutants and all other irritants or contaminants
- M. To liability arising out of partial or complete failure of any **dam(s)** owned or operated by any **covered party**
- N. To any liability for past, present, or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos, whether the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever
- O. To liability arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment or vehicle, including any motorized **watercraft**, while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice in preparation for any such contest or activity, if such contest or activity is sanctioned or permitted by a **covered party**, or (2) the operation or use of any snowmobile or trailer designed for use therewith when used for recreational, stunting or racing activities

However, this exclusion shall not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any non-motorized **watercraft**.

For the purpose of this exclusion, "non-motorized **watercraft**" shall mean **watercraft** without power motors and **watercraft** with power motors which are not in use during an event otherwise excluded hereunder.

- P. To any liability arising out of or in connection with those causes of action or counts in any suit for injunctive relief or which do not contain demands or prayers for monetary damage
- Q. Under coverage C to:
  - 1. **Personal injury, Property damage or Employment-related injury** as defined in the Memorandum
  - 2. The refund of taxes, fees or assessments
  - 3. a.) Liability of a **covered party** arising in whole or in part, out of any **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled



- b.) Liability arising out of the willful violation of a penal statute, code or ordinance committed by or with the knowledge or consent of any **covered party** except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this subpart (Q)(3)
- 4. Liability of any **covered party** arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids
- 5. Injury to, destruction or disappearance of any tangible property (including money) or the loss of use thereof
- 6. Failure to perform, or breach of, a contractual obligation

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under coverages A, B and D of this Memorandum;

- R. To benefits payable under an employee benefit plan (whether the plan is voluntarily established by the **covered party** or mandated by statute) because of unlawful discrimination;
- S. To any liability arising out of or in connection with any claim for punitive, exemplary or multiples of damages/penalties;
- T. Under Coverage D, **employment-related injury**, for:
  - 1. Strikes and lockouts. This Memorandum does not apply to any claim or claims for loss arising out of a lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations
  - 2. W.A.R.N. Act. This Memorandum does not apply to any claim or claims for loss arising out of the Workers Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law
  - 3. Any cost incurred by the **covered party** to modify or purchase building or property in order to make said building or property more accessible or accommodating to any disabled person
  - 4. **Personal injury, property damage, and public officials errors and omissions**
  - 5. a.) Liability of a **covered party** arising in whole or in part, out of any **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled
  - b.) Liability arising out of the willful violation of a penal statute, code or ordinance committed by or with the knowledge or consent of any **covered**

**party**; except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this subpart (T)(5)

- U. It is understood and agreed that this Memorandum does not apply to liability imposed upon a **covered party** (or which is imputed to a **covered party**) under the "Employment Retirement Income Security Act of 1974" and any law amendatory thereof.

## DEFINITIONS

The following definitions shall govern the meaning of the defined terms for the purposes of this Memorandum. The defined terms are set forth in **bold face** type where used herein.

"**Aircraft**" means a vehicle designed for the transport of persons or property principally in the air.

"**Completed operations hazard**" includes **personal injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **personal injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **covered party**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. when all operations to be performed by or on behalf of the covered party under the contract have been completed, or
- B. when all operations to be performed by or on behalf of the **covered party** at the site of the operations have been completed, or
- C. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include liability arising out of:

- 1. operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- 2. the existence of tools, uninstalled equipment or abandoned or unused materials.

"**Covered party**" means any person or organization qualifying as a **covered party** under the "covered party, covered persons or entities" section of this Memorandum. The

coverage afforded applies separately to each **covered party** against whom claim is made or suit is brought, except with respect to the limits of the Authority's liability.

"**Dam**" means any artificial barrier together with appurtenant works which:

1. is 25 feet or more in height from the foot of a natural bed of stream or watercourse;  
or
2. has water impounding capacity of 50 acre feet or more.

Except that no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the federal government.

"**Damages**" means monetary compensation: (a) for injury, death and for care and loss of services resulting from **personal injury**; (b) for loss of use of property resulting from **property damage**; (c) resulting from **public officials errors and omissions**, or (d) **employment-related injury**

"**Defense costs**" means reasonable fees charged by an attorney, including expenses of a claims servicing organization the **covered party** has engaged, and all other reasonable fees, costs, including third-party attorney's fees and costs as authorized by law or under contract, and expenses attributable to the investigation, defense, administration or appeal of a claim within the scope of coverage afforded by this Memorandum except salaries of employees of a **covered party** and the overhead and other office expenses of a **covered party** shall not be considered **defense costs**.

"**Employment-related injury**" means injury, except **personal injury**, **property damage** or **public errors and omissions**, arising out of an actual or alleged **wrongful act** in connection with any person's prospective employment, actual employment or termination of employment by a **covered party**, including but not limited to wrongful termination, discrimination or sexual harassment.

"**Excess defense costs**" means **defense costs** incurred by the **covered party** with the written consent of the Authority after the self-insured retention has been exhausted by payment of judgments, settlements and **defense costs**.

"**Non-owned aircraft**" means any **aircraft** other than:

1. **Aircraft** owned in whole or in part by or registered in the name of the **covered party**; or
2. **Aircraft** having a seating capacity in excess of forty-five (45) passenger seats; or
3. **Aircraft** which are the subject of a lease or service agreement with the **covered party** for a period in excess of thirty (30) days.

"**Nuclear material**" means source material, special nuclear material, or byproduct material; "source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

**"Occurrence"** means an accident or event, including injurious exposure to conditions, which results, during the Memorandum period, in **personal injury** or **property damage** neither expected nor intended from the standpoint of the **covered party**. All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**. As respects coverages A and B, **occurrence** shall apply separately to each Member of the Authority named in this Memorandum.

**"Personal injury"** means (a) bodily injury, death, sickness, disease, disability, shock, emotional distress, mental anguish and mental injury resulting from bodily injury; (b) false arrest, detention or imprisonment or malicious prosecution; (c) the publication or utterance of libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property, or publication or utterance in violation of rights of privacy; (d) wrongful entry or eviction, or other invasion of the right of private occupancy; (e) assault and battery, not committed by, at the direction of or with the consent of the **covered party**, unless committed or directed for the purpose of protecting persons or property from injury or death; (f) discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, age, employment, or disability.

**"Property damage"** means (1) physical injury to or destruction of tangible property which occurs during the Memorandum period, including the loss of use thereof at any time resulting therefrom; or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the Memorandum period.

**"Public officials errors and omissions"** shall mean any actual or alleged error or misstatement or act of omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the **covered parties** in the discharge of their duties with the public entity individually or collectively, or any matter claimed against them solely by reason of their being or having been **covered parties**.

**"Subsidence"** means any **property damage** directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, or any other movement of land or earth.

**"Ultimate net loss"** means the total sum which the **covered party** becomes legally liable to pay as **damages** and costs by reason of judgments or by reason of settlements made with the written consent of the **covered party** and the Authority. **Excess defense costs** which are paid as a consequence of any **occurrence** or **wrongful act** covered hereunder are reimbursed by the Authority as part of the **ultimate net loss** as defined herein.

**"Watercraft"** means a vehicle designed for the transport of persons or property principally on water.

**"Wrongful act"** means any actual or alleged negligent act, error or omission arising out of conduct or performance of the **covered party** in the performance of his or her or their duties or any actual or alleged act in connection with any person's prospective

employment, actual employment or termination of employment by a **covered party**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. As respects coverages C and D, **wrongful act** shall apply separately to each Member of the Authority named in this Memorandum.

## CONDITIONS

### 1. PREMIUM

The premium designated in the Declarations as "risk premium" is a deposit premium only, and shall be adjusted annually in accordance with the provisions for "risk premium adjustments" as adopted by the board of directors of the Authority.

### 2. INSPECTION

The Authority shall be permitted but not obligated to inspect the **covered party's** property and operations at any time. Neither the Authority's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **covered party** or others, to determine or warrant that such property or operations are safe. The Authority may examine the **covered party's** books and records at any time during the Memorandum period and extensions thereof and within three years after the final termination of this Memorandum, as far as they relate to the subject matter of this coverage.

### 3. COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, WRONGFUL ACT, CLAIM OR SUIT

A. In the event of an **occurrence** or a **wrongful act** reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **covered party** to the Authority or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence** or **wrongful act**.

B. If claim is made or suit is brought against the **covered party** which appears likely to involve the Authority, the **covered party** shall forward to the Authority every demand, notice, summons or other process received by him/her or his/her representative, immediately or within a reasonable amount of time after the individual responsible for coverage at the Member or his/her designee has knowledge of the claim or suit.

C. The **covered party** shall cooperate with the Authority and upon its request, assist in making settlements, in the conduct of suits and in enforcing any right to contribution, subrogation, or indemnity against any person or organization who may be liable to the **covered party** because of liability with respect to which

coverage is afforded under this Memorandum, and the **covered party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **covered party** shall not, except at its own costs, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that the amount of **ultimate net loss** becomes certain either through trial court judgment, arbitration award, or agreement among the **covered party**, the claimant and the Authority then the **covered party** may pay the amount of **ultimate net loss** to the claimant to effect settlement and, upon submission of due proof thereof, the Authority shall indemnify the **covered party** for that part of such payment which is in excess of the Retained Limit, or will, upon request of the **covered party**, make such payment to the claimant on behalf of the **covered party**.

D. The Authority, at its option, shall have the right at its own expense to investigate any claim and/or negotiate the settlement thereof, as it deems expedient, but the Authority shall not commit the **covered party** to any settlement without the **covered party's** consent. Should the claimant or plaintiff, as the case might be, tender a bona-fide, good faith, settlement demand which when added to the incurred **defense costs** is in excess of the **covered party's** retention, the payment of which would result in the full and final disposition of said claim or suit, then if such settlement demand is acceptable to either (1) the **covered party**, or (2) the Authority (but not both), then with regard to that settlement demand:

1. if such settlement demand is not acceptable to the Authority and the **covered party** tenders to the Authority an amount equal to the **covered party's** retention less incurred **defense costs**, if any, the Authority shall then reimburse the **covered party** all sums which the **covered party** shall be legally obligated to pay as **damages**, including without limitation, the **covered party's** retention, plus future investigation, adjustment, appraisal, appeal, post judgment interest and **defense costs**. However, in no event shall the Authority's agreement to reimburse the **covered party** exceed the Limit of Liability as stated in the Declarations in addition to such investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs**. Should the full and final disposition of the claim, including judgments, settlements, investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs** be less than the amount tendered by the **covered party**, the unused portion of the tendered amount shall be returned to the **covered party** by the Authority.
2. if such settlement demand is not acceptable to the **covered party** and the Authority tenders to the **covered party** an amount equal to the difference between the **covered party's** retention, less incurred **defense costs**, and said settlement demand, or the applicable amount specified in the limits of liability section of the Declarations, whichever is less, then the Authority's agreement to reimburse the **covered party** for the **ultimate net loss** hereunder shall be discharged and terminated and the Authority shall have no further obligations with respect thereto.



#### 4. APPEALS

When a lawsuit has proceeded to trial court judgment and neither the **covered party** nor the Authority have invoked the provisions of condition 3. D (1) or (2) above and the **covered party** elects not to appeal a judgment in excess of the Retained Limit, the Authority may elect to do so at its own expense, but in no event shall the liability of the Authority for **ultimate net loss** exceed the applicable amount specified in the limits of liability section of the Declarations plus all **defense costs** necessary and incident to such appeal.

#### 5. ACTION AGAINST THE AUTHORITY

No action shall lie against the Authority with respect to any one **occurrence** unless, as a condition precedent thereto, the **covered party** shall have fully complied with all the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay an amount of **ultimate net loss** in excess of the Retained Limit shall have been finally determined either by judgment against the **covered party** after actual trial, arbitration award, or by written agreement of the **covered party**, the claimant and the Authority. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Memorandum the extent of the coverage afforded by this Memorandum. Nothing contained in this Memorandum shall give any person or organization any right to join the Authority as a co-defendant in any action against the **covered party** to determine the **covered party's** liability.

Bankruptcy or insolvency of the **covered party** shall not relieve the Authority of any of its obligations hereunder.

#### 6. OTHER COVERAGE

If collectible insurance with an insurer is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such insurance; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the Limit of Liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for **damages** is available under this Memorandum and under a hospital professional liability and general liability Memorandum of Coverage ("medical malpractice Memorandum") also issued by the Authority, it shall be conclusively presumed that the coverage afforded under the medical malpractice Memorandum shall be primary and any coverage available under this Memorandum shall be excess only. For claims to which this provision applies, the exhaustion of the Authority's Limit of Liability under the medical malpractice Memorandum will satisfy the **covered party's** Retained Limit under this Memorandum of Coverage.

## 7. SUBROGATION

The Authority shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the Retained Limit plus the Limit of Liability hereunder shall be reimbursed first to the extent of actual payment. The Authority shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Authority, it shall bear the expenses thereof.

## 8. CHANGES

Notice to the Authority or any agent of the Authority or knowledge possessed by the Authority or any agent of the Authority or by any other person shall not effect a waiver or change in any part of this Memorandum or stop the Authority from asserting any right under the terms of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by endorsement issued to form a part of this Memorandum.

## 9. ASSIGNMENT

Assignment of interest under this Memorandum shall not bind the Authority until its consent is endorsed hereon; if, however, the **covered party** shall die, such coverage as is afforded by this Memorandum shall apply (a) to the **covered party's** legal representative, as the **covered party**, but only while acting within the scope of his/her duties as such, and (b) with respect to the property of the **covered party**, to the person having proper temporary custody thereof, as **covered party**, but only until the appointment and qualification of the legal representative.

## 10. FUNDING OF MEMBER'S RETAINED LIMIT

The Member agrees to maintain a loss fund in an amount to be determined by mutual agreement among the Member, the servicing organization designated in the Memorandum Declarations (if any), and the Authority for the payment of all claims and expenses falling within the Member's Retained Limit.

This fund shall be reimbursed as necessary to maintain a balance in accordance with the terms of the servicing agreement between the Member and the servicing organization (if any).

In the event of cancellation, expiration or revision of the contract between the Member and the servicing organization, the Member shall notify the Authority thereof within thirty days of the effective date of such cancellation, expiration or revision; but failure to notify the Authority shall not invalidate the coverage.



#### 11. CANCELLATION AND NONRENEWAL

This Memorandum may be canceled by the "**Covered Party**" only at the end of the Memorandum Period and pursuant to the provisions of Article 20(b) of the "**Joint Powers Agreement**". The Authority may cancel this agreement pursuant to the provisions of Article 21(a)(1) and (a)(2) of the "**Joint Powers Agreement**" or the Authority's Invoicing and Payment Policy established by the Board of Directors. This Memorandum does not apply to any "**loss**" as a result of any "**occurrences**" or "**wrongful acts**" taking place at or after the effective date of any such cancellation.

#### 12. MEMBER

The Member named in the Declarations is authorized to act on behalf of all covered parties with respect to the giving and receiving of notice of cancellation and receiving any return premium that may become payable under this Memorandum. The Member named in the Declarations is responsible for the payment of all premiums but the other covered parties jointly and severally agree to make such premium payments in full if the Member fails to pay the amount due within thirty days after the Authority gives a written demand for payment to the Member.

#### 13. SEVERABILITY OF INTERESTS

The term **covered party** is used severally and not collectively, but the inclusion herein of more than one **covered party** shall not operate to increase the limits of the Authority's liability.

ENDORSEMENT NO. U-1

CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
GENERAL LIABILITY I

ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT

It is agreed that the "Covered Party, Covered Persons or Entities" section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

Additional Covered Party:

NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF COVERAGE

As Respects:

PER ATTACHED CERTIFICATE OF COVERAGE

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date:

Memorandum No.: EIA 08 EL-00

Issued to: All Members

Issue Date: October 15, 2008

  
Authorized Representative

CSAC Excess Insurance Authority (CSAC EIA)

## ENDORSEMENT NO. U-2

### CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA) GENERAL LIABILITY I

#### INVESTMENT RISK AMENDATORY ENDORSEMENT

It is understood and agreed that as respects **ultimate net loss**, this Memorandum does not apply:

To liability arising, in any way, from any act, error, omission or breach of duty, whether in a **covered party's** capacity as a trustee or fiduciary or otherwise, in connection with any investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing any public funds.

However, subject to the special limits of liability set forth in subparagraphs A and B below, this exclusion shall not apply:

1. To liability for the loss of funds belonging to or held for the benefit of individuals or entities who are not **covered parties** hereunder, provided that the Authority's liability shall be limited as set forth in the special limits of liability, sub-paragraph (A) below.
2. To excess **defense costs** incurred on account of the actual or alleged loss of public funds belonging to, or held for the benefit of, any **covered party**, provided that such claim or suit is not brought by or on behalf of a **covered party** hereunder, and further provided that the Authority's liability for such **excess defense costs** shall be limited as set forth in the special limits of liability, sub-paragraph (B) below.

#### **Special Limits of Liability**

Regardless of the number of (A) covered parties under this Memorandum, (B) persons or organizations who sustain injury or damage, or (C) claims made or suits brought within the meaning of subparagraphs (1) and (2) above, the Authority's liability under this endorsement shall be limited as follows:

- A. As respects liability arising under subparagraph (1) above, the Authority's liability, as a result of any one wrongful act, and in the aggregate, shall be only for ultimate net loss not exceeding \$1,000,000, less the Retained Limit, as specified on the Declarations.
- B. As respects liability arising under subparagraph (2) above, the Authority's liability, as a result of any one wrongful act, and in the aggregate, shall be limited to excess defense costs, not exceeding \$1,000,000, less the Retained Limit as specified on the Declarations.
- C. There is no limit to the number of wrongful acts during the Memorandum period for which claims hereunder may be made, except that the liability of the Authority because of all wrongful acts during each Memorandum period shall not exceed the difference between \$1,000,000 and the Retained Limit, as specified on the Declarations.

- D. For the purpose of determining the limit of the Authority's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one wrongful act.
- E. Wrongful acts taking place over more than one Memorandum period shall be deemed to have taken place during the last Memorandum period, and only that limit shall apply.

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 08 EL-00

**Issued to:** All Members

**Issue Date:** October 15, 2008



**Authorized Representative**  
**CSAC Excess Insurance Authority (CSAC EIA)**

ENDORSEMENT NO. U-3

CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
GENERAL LIABILITY I

VIOLATION OF COMMUNICATIONS OR INFORMATION LAW EXCLUSION

As respects ultimate net loss, this memorandum does not apply:

To any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state, or local government, including any amendment or addition to such laws, which prohibits or limits the sending, transmitting or communicating of material or information by unsolicited sending of faxes, emails or other means of electronic transmission.

It is understood that to the extent any coverage may otherwise be available under this policy or any of its endorsements, the provisions of this exclusion will supersede.

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date:

Memorandum No.: EIA 08 EL-00

Issued to: All Members

Issue Date: October 15, 2008

  
Authorized Representative

CSAC Excess Insurance Authority (CSAC EIA)

**ENDORSEMENT NO. U-4**

**CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
GENERAL LIABILITY I**

**STRIP SEARCH EXCLUSION**

As respects ultimate net loss, this memorandum does not apply:

To liability arising out of or in connection with a strip search or body cavity search of a detained person or persons. As used in this exclusion, strip search means a search which includes a physical or visual inspection of the underclothing, breasts, buttocks, or genitalia of the searched person. As used in this exclusion, body cavity search means a visual or physical inspection of the stomach, rectal cavity and/or vagina.

This exclusion shall apply only to strip search or body cavity search activity that is alleged in a Class Action. As used in this exclusion, "Class Action" means a certified class action or a lawsuit that includes class action allegations; provided however, "Class Action" does not include any suit in which class certification has been denied or withdrawn.

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 08 EL-00

**Issued to:** All Members

**Issue Date:** October 15, 2008

  
Authorized Representative

CSAC Excess Insurance Authority (CSAC EIA)

**ENDORSEMENT NO. U-5**

**CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
GENERAL LIABILITY I**

**ECONOMIC OR TRADE SANCTIONS**

If coverage for a claim or suit under this Memorandum is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or suit will be null and void.

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 08 EL-00

**Issued to:** All Members

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Authorized Representative  
CSAC Excess Insurance Authority (CSAC EIA)

ENDORSEMENT NO. U-6

CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
GENERAL LIABILITY I

CLAIM REPORTING AMENDATORY ENDORSEMENT

It is understood and agreed that Item 3.a. of the Conditions is replaced in its entirety by the following:

- A. In the event of an **occurrence** or a **wrongful act** reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **covered party** to the Authority or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence** or **wrongful act**.

An occurrence or wrongful act reasonably likely to involve the Authority is agreed to include the following:

1. Death
2. Paralysis, paraplegia, quadriplegia
3. Loss of eye(s) or limb(s)
4. Spinal cord or brain injury
5. Dismemberment or amputation
6. Sensory organ or nerve injury, or neurological deficit
7. Serious burns
8. Severe scarring
9. A sexual assault or battery, including, but not limited to, rape, molestation or sexual abuse
10. Substantial disability or disfigurement
11. Any class action
12. Any claim with trial within 9 months, and demand of \$1,000,000 or more
13. Any **occurrence** or **wrongful act** with total incurred (combination of paid and outstanding reserves) at or above the lesser of \$500,000 or 50% of the Member's Retained Limit

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date:

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Authorized Representative  
CSAC Excess Insurance Authority (CSAC EIA)