



# Sutter Butte Flood Control Agency

A Partnership for Flood Safety

## Board of Directors

### Agenda Summary

February 9, 2011

## 1:30 PM Regular Meeting

### Meeting Location:

**Sutter County Superintendent of Schools Training Center**

**1699 Sierra Avenue**

**Yuba City, CA**

The agenda is posted in the building of the Sutter County Superintendent of Schools Training Center, 1699 Sierra Avenue, Yuba City, CA 95993, and at the Sutter County Library, 750 Forbes Avenue, Yuba City. The agenda summary and backup materials, and approved minutes are also posted on the Sutter Butte Flood Control Agency website at [www.sutterbutteflood.org](http://www.sutterbutteflood.org). Materials related to an item on this agenda and submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the office of the Board Clerk at 1160 Civic Center Blvd., Yuba City, during normal business hours. In compliance with the American with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability related modifications or accommodations to participate in this meeting, please contact Sarah Modeste at the Sutter Butte Flood Control Office, 1227 Bridge Street, Suite C, Yuba City, CA 95993 or 530-755-9859. Requests must be made one full business day before the start of the meeting.

<b><u>County of Sutter</u></b>	<b><u>County of Butte</u></b>
1. Larry Montna 2. James Gallagher Alt. Larry Munger	1. Bill Connelly 2. Steve Lambert
<b><u>City of Yuba City</u></b>	<b><u>City of Gridley</u></b>
1. John Miller 2. John Dukes Alts. John Buckland, Tej Maan	1. Owen Stiles Alt. Jerry Anne Fichter
<b><u>City of Live Oak</u></b>	<b><u>City of Biggs</u></b>
1. Gary Baland Alt. Felicity Clark	1. Mike Bottorff Alt. Bo Sheppard
<b><u>Levee District 1</u></b>	<b><u>Levee District 9</u></b>
1. Francis Silva 2. Al Montna Alt. Barbara LeVake	1. David Lamon 2. David Schmidl Alt. Chris Schmidl

Persons wishing to address the Board during consideration of matters listed on the agenda will be allowed to do so. Testimony should always begin with the speaker giving his or her name and place of residence. Requests for assistive listening devices or other accommodations, such as interpretive services, should be made through the Sutter Butte Flood Control Agency office at (530) 755-9859. Requests should be made at least 72 hours prior to the meeting. Later requests will be accommodated to the extent feasible.

## **1:30 P.M. REGULAR MEETING/CALL TO ORDER**

Roll Call

Pledge of Allegiance

### **CONSENT CALENDAR**

The Consent Calendar groups together those items which are considered noncontroversial or for which prior policy direction has been given to staff and that require only routine action by the Board. The Chairman will advise the audience that the matters may be adopted in total by one motion; however, the Board may, at its option or upon request of a member of the public, consider any matter separately.

- 1) Approval of the minutes for the Regular Board Meeting of January 12, 2011
- 2) Receipt and file of three Board of Senior Consultant contracts: RiverSmith Engineering, Inc.; George Sills Geotechnical Engineering Consultant, LLC; and Donald Babbitt, PE.

### **PRESENTATION, DISCUSSION AND ACTION ITEMS**

- 3) Approval for RFP for title reports, title insurance, and escrow services for minimum project footprint (levee prism plus 20 feet beyond toe).
- 4) Approval of consultant agreement between SBFCA and Edgar & Associates LLP for services as Agency Executive Director.
- 5) Approval to hire a Director of Engineering per Board direction at the January 12, 2011 meeting.
  - a. Approval of the Director of Engineering job description
  - b. Approval of recommended salary range
  - c. Approval of job search and hiring process
- 6) Approval of an amendment to an existing contract with Peterson Brustad Inc. for transitional general engineering until the Director of Engineering is hired and integrated.
- 7) Approval of a Task Order 7 under existing master contract with Peterson Brustad Inc. for miscellaneous technical support items.

### **INFORMATIONAL AND POSSIBLE APPROVAL ITEMS**

- 8) Other reports from Agency staff and consultants regarding current Sutter Butte Flood Control Agency activities.
- 9) Report (if necessary) by the Citizens' Assessment District Advisory Committee (CADAC).
- 10) Report (if necessary) by Levee District No. 1 regarding setback levee project at Star Bend (an early implementation project).

11) Report (if necessary) by the USACE Project Manager regarding current status of the Feasibility Study for the Sutter Basin.

12) Report (if necessary) by the DWR Senior Project Manager regarding current DWR activities.

### **CORRESPONDENCE**

13) Report on correspondence sent by and received by the Board.

### **PUBLIC COMMENT**

Members of the public will be allowed to address the Sutter Butte Flood Control Agency's Board of Directors on items of interest to the public that are within the subject matter jurisdiction of the Board. Any member of the audience who may wish to bring a matter before the Board that has not been placed on the agenda may do so at this time; however, State law provides that no action may be taken on any item not appearing on the posted Agenda.

### **ADJOURNMENT**



# **Sutter Butte Flood Control Agency**

*A Partnership for Flood Safety*

February 9, 2011

**TO:** Board of Directors

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

**SUBJECT:** Approval of the Minutes for the Regular Board Meeting of January 12, 2011

We have attached the proposed minutes for the Board of Director's Regular meeting of January 12, 2011 for your review, modification, and/or approval.

### **Recommendation**

We recommend that your Board approve the minutes and authorize the Chairman to sign the minutes.

Thank you.

**MINUTES OF THE BOARD OF DIRECTORS OF THE  
SUTTER BUTTE FLOOD CONTROL AGENCY  
REGULAR MEETING OF  
January 12, 2011**

The Sutter Butte Flood Control Agency (Agency) Board of Directors (Board), State of California, met on the above date in Regular Session at 1:30 p.m. in the Superintendent of Schools, Training Center, Suite C, 1699 Sierra Avenue, Yuba City, California.

**MEMBERS PRESENT:** County of Sutter: Larry Montna, James Gallagher  
County of Butte: Bill Connelly  
City of Yuba City: John Miller, John Dukes  
City of Gridley: Owen Stiles  
City of Live Oak: Gary Baland  
City of Biggs: Mike Bottorff  
Levee District 1: Francis Silva, Barbara LaVake  
Levee District 9: David Schmidl, David Lamon

**MEMBERS ABSENT:** Director Steve Lambert

**STAFF PRESENT:** Bill Edgar, Interim Executive Director; Scott Shapiro, Agency Counsel; David Peterson, Agency Engineer, Kim Floyd, Agency Public Information Officer, and Sarah Modeste, Staff Analyst

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**REGULAR SESSION**

Executive Director Bill Edgar explained that Chairman Steve Lambert was unable to attend the meeting, and requested approval to have the outgoing chairman, Larry Montna, open the meeting until the vice chair was elected. At that time, the vice chair would run the rest of the meeting. A motion was made Director David Schmidl to allow Outgoing Chair Larry Montna facilitate the meeting until the vice chair was election. The motion was seconded by Director John Dukes and carried by all members present.

Outgoing Chairman Larry Montna called the meeting to order and asked the Clerk to call the roll. Chairman Montna asked Director James Gallagher to lead the Board and the audience in the pledge of Allegiance.

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**CONSENT CALENDAR**

On motion of Director David Schmidl, seconded by Director John Dukes, and carried by those present, the Board approved the Consent Calendar as follows:

- 1) Approval of the minutes for the Regular Board Meeting of December 8, 2010 with the correction of the Members Absent section by removing Director Malcolm Weston's name.
- 2) Approval of the resolution establishing the regular meetings for the Sutter Butte Flood Control Agency for the 2011 calendar year.

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**SELECTION OF THE VICE-CHAIR FOR THE 2011 YEAR**

- 3) The selection of the Vice-Chair of the Sutter Butte Flood Control Agency Board of Directors for the 2011 year. (Selection should be from representatives from Yuba City in accordance with the Board's policy on the rotation of officers).

Director Al Monta motioned to elect Director John Miller as the Vice Chair of the Agency Board of Directors in 2011. Director Francis Silva seconded the motion and carried by those present.

Director Miller conducted the remainder of the meeting.

## PRESENTATION, DISCUSSION, AND ACTION ITEMS

4) Review and discussion of SBFCA's current organization and management, comparison to other regional agencies, and the plan for the future.

Executive Director Bill Edgar explained that Phase II of the SBFCA work is underway, which includes final engineering, environmental work for the project, and securing permitting approval. Currently, the Agency is focusing on the design and financing, and we are in the process of completing the 30% project design. HDR leads this task. Jones & Stokes has cleared the way for the final geotechnical work, and are beginning to work on the final EIS/EIR. Bender Rosenthal provides project support for right-of-way, and KNN Public Finance is leading the project financing needs. Capitol Public Finance Group is setting up a new accounting structure with the City of Yuba City so the Agency accounting can be tracked in a way that DWR requests. It is a very detailed and specific process.

Mr. Edgar continued his overview by explaining that the 30% design concepts were reviewed by the Board's ad hoc committee and technical staff, and the engineers were sent back to the drawing board to do a lot of refinements. SBFCA staff will continue to work with partner agencies over the next month during the refinements and then return with an update to the ad hoc committee and provide a full presentation to the Board at the March meeting.

The EIP package was submitted to the State and we are now awaiting staff comments. On December 14, 2010, SBFCA made an informational presentation at the Army Corps of Engineers' project review board meeting. The Corps is very supportive of the SBFCA project, and the State is interested in providing the Agency a design grant. The section 408 staff is energized to start reviewing the information.

The Agency's Two-Year Budget was approved last month, assessments have been levied by both counties, and money is beginning flow to the Agency. The Board adopted the ad hoc committee's recommendation that the interim team be continued because of uncertainties at the Federal and State level, and the project is not at the point where a permanent staff would be appropriate. The interim team will continue until the Spring of 2012, where it will be reevaluated in the context of preparing the 2012-2013 budget.

Next, Mr. Edgar reviewed the Agency's organizational chart, as well as other, similar agencies' organizational charts, including SAFCA's Natomas project, West Sacramento, and Three Rivers Levee Improvement Authority.

Mr. Edgar explained that the ad hoc committee on Agency staffing met to review the information included under this Board agenda item. Committee members included Directors Steve Lambert, Dave Lamon, John Miller, Al Montna, Barbara LeVake, and Larry Montna. After much discussion, committee members expressed concerns about the director of engineering position. Some concerns were related to projected costs, and whether or not the Agency should consider hiring a full time director of engineering employee, which could provide many advantages. A third issue some members expressed was with an engineer doing technical work and providing oversight. This was something with which the committee wasn't comfortable.

The committee recommended its Board approve their recommendation to convert the director of engineering position to a full time employee instead of a consultant position. Mr. Edgar explained that should the Board move forward with the committee's recommendation, Agency staff will report to the February Board meeting with a job description, recruitment selection process, and then move forward. Mr. Edgar stated that the City of Yuba City had agreed to assist the Agency to conduct the hiring process.

Additionally, the committee expressed interest in receiving more detailed information as consultant contracts are ready for renewal, and that HDR provide a progress report at each Board meeting. This will begin at the March, 2011 meeting when HDR presents its full 30% preliminary design contract. Also, at the February Board meeting, an updated phase-out plan for Peterson Brustad's director of engineering work would be presented so the project would continue to move forward through the transition.

Agency Counsel Scott Shapiro added that all Agency contracts are hourly contracts, and are based on not-to-exceed budgets.

Director Bill Connelly asked if benefits would be provided for the director of engineering position, and if the position would be an independent consultant or a full-time position. Mr. Edgar responded that that would be part of the Board's decision. The position will run through the City of Yuba City so the Agency won't have to establish its own human resource processes, but it isn't the Agency's intention to include a large benefit

## UNAPPROVED MINUTES

package. Mr. Shapiro added that having an independent consultant vs. full-time employee raises some legal issues because an independent contractor is defined as someone completing a task. He added that if the Board wishes to explore hiring an independent contractor, it can be reviewed. Director Connelly expressed his agreement in hiring a full-time position.

Director Francis Silva asked why a specific contract amount was included in each contract. Mr. Shapiro responded that a not-to-exceed amount was necessary for budgeting purposes and also to ensure that a vendor does not bill in excess of what is planned. He also explained that Mr. Edgar is responsible for the review and approval of all invoices.

Director Al Montna asked for an explanation of the contract amounts listed under agenda item six. Mr. Edgar explained that the amount of the contracts needed to be adjusted to match the amounts in the recently approved Agency budget. Director Al Montna added that he would like to see a monthly report outlining the amount remaining on each contract, an explanation of activities performed, and how much of the contract remains to ensure that each contract is managed properly. Mr. Edgar explained the new accounting system to comply with DWR is under development and asked to begin providing those reports in March. Director Al Montna agreed.

Director Baland asked if there would be a continued need for Peterson Brustad's work if the Agency hired a Director of Engineering. Mr. Edgar responded that the Director of Engineering would provide administrative and technical oversight services under the program management role, and Peterson Brustad would continue to provide some technical work.

Director Baland also questioned the request for additional reporting and monthly Board meetings, and if it would result in more billable hours for consultants. Mr. Edgar responded that the budget requests were reasonable, and that Agency staff would be able to develop a reporting system. Mr. Shapiro added that the staff's understanding of the Board requests entails an oral update to the Board about completed activities the prior month, and that's already included in monthly invoices, and most of staff attend the monthly Board meetings, so no additional time would be added for that request.

Director Al Montna requested a motion on Item 4. Before moving forward, Director James Gallagher proposed a possible alternative for discussion purposes. Director Gallagher proposed going out to bid on the Director of Engineering services to obtain competitive bids and thus reduce costs. He added that based on his experience, a consultant team has more resources than an individual, which could benefit the Agency. He also added that the proposed Director of Engineering position will require a person to conduct a variety of work – from technical to political – and that could be hard to find in one person. Director Al Montna stated that while Director Gallagher's points were well received, it is important to get someone in-house to work solely on behalf of the Agency. Director Miller added that the idea is if the Agency could find the right person, that person could eventually step into the Executive Director position.

Director Bottorff asked how long this job would be available. Mr. Edgar responded that it should be considered a 5-10 year position.

Director Gallagher added that Mr. Edgar's position includes different duties than the proposed Director of Engineering position. In his experience, he's noted that the Agencies have an Executive Director and a Program Manager. Mr. Edgar explained that they are two different positions, but if the right person is hired, you may be able to transition them into the Executive Director position.

Director Baland asked if the Director of Engineering position would replace the entire \$600,000 proposed by Peterson Brustad, or a just a portion of that money. Mr. Edgar responded that it would replace a portion of the funds.

Director Al Montna added that the number of in-house employees depends on the needs, and wants, of the Board. For example, Levee District 1 completed the Star Bend work with very few employees and consultants, but at the Agency, an oversight position is needed.

Director Bottorff asked for the estimated savings of hiring a Director of Engineering. Mr. Edgar responded that \$400,000 would be available for this position, but that the Agency hopes to spend much less on the position, but it will depend on the applicants' skill sets.

Director Miller added that if the in-house position becomes difficult to fill, the Agency may have to publicize a request for proposals (RFP). Mr. Shapiro added that the ad hoc staffing committee discussed positing a

position and an RFP, but the committee ultimately decided that an in-house employee was preferred, but if the hiring isn't successful, than the Agency could always fall back to an RFP.

Director Lamon added that with a project of this magnitude, the oversight is very critical. The Agency really needs someone on our team, and the closer the better. We don't want someone who is splitting his time between projects. He added that he isn't looking at this as strictly a cost savings, but instead hiring someone who would be a strong advocate for the Agency and closely monitor the consultants' work.

**A motion was made by Director Al Montna to approve the start of the hiring process for the Agency's Director of Engineering. The motion was seconded by Director Dave Lamon and was carried by those present with the exception of Director David Schmidl who abstained.**

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**5) Approval of one consultant agreement between SBFCA and PB Americas, Inc. for ongoing assessment engineering services related to continuous update of county assessment rolls and assessment engineering analysis of appeals.**

Mr. Edgar explained that a new contract is needed with PB Americas for their assessment-related work, including engineering support for appeals, corrections to the assessment rolls, and preparing the next assessment rolls. Following the successful completion of this work, it is anticipated that the Agency can request bids for the ongoing assessment roll maintenance.

Director Francis Silva asked for clarification on which staff members handles the appeals, as he was under the impression that Kim Floyd did. Mr. Edgar responded that Ms. Floyd and Bob Cermak of PB Americas work together on the appeals, and Mr. Cermak handles the engineering related portion. Ms. Floyd added that the Agency has an open appeals process, and the appeals are submitted regularly. She explained that she acts as triage, and is sometimes able to work through the issue with the property owner, but must defer the engineering questions to Mr. Cermak. Mr. Shapiro added that the assessment district is set up so each property is in a single zone, and that the Agency treats the entire property the same. So, for example, if a parcel is sub-divided, and it crosses several zones, it needs to be evaluated by Mr. Cermak. Director Silva added that the contract was too high for the amount of work needed.

Director John Dukes asked if there will continue to be appeals. Mr. Edgar responded that there will always be changes and the assessment rolls have to be updated as changes are made to avoid confusion and mistakes in the data. The assessment spans many years, so proper tracking is critical.

**A motion was made by Director Larry Montna to approve the consultant agreement between SBFCA and PB Americas, Inc. for ongoing assessment engineering services related to continuous update of county assessment rolls and assessment engineering analysis of appeals. The motion was seconded by Director John Miller and was carried by those present.**

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**6) Approval of Operations amendments to consultant agreements for general Agency operations for the last 6 months of the 2010-11 Fiscal Year:**

- a. **Approval of the Fifth Amendment to the Agreement between SBFCA and Downey Brand LLP for comprehensive legal services for the Agency.**
- b. **Approval of the First Amendment to the Agreement between SBFCA and Kennedy Modeste Communications for general administrative services such as Agency administration, finance, public contact, and serving as the Board Secretary.**
- c. **Approval of the First Amendment to the Agreement between SBFCA and KNN Public Finance for serving as Financial Advisor (debt financing advice).**
- d. **Approval of the First Amendment to the Agreement between SBFCA and Capital Public Finance Group as Financial Advisor (advice pertaining to State required financial planning projections, budgeting, and accounting).**

Mr. Edgar outlined the four amendments under consideration and explained that the consultants provide general agency operations work. The contracts are renewed every time the budget is adopted and the amount is updated to reflect the amounts in the adopted budget. The Board of Directors adopted the budget in December, 2010, so the contracts need to be brought into conformance with the budget. Each contract is based on hourly work, and reflect not-to-exceed amounts.



Mr. Edgar explained that KNN's work was to help the Agency ensure it has the funds needed to continue work, and when necessary issue debt. KNN is helping the Agency stay informed on the State budget changes as the evolve, and the contract amendment will fund that work.

Seth Wurzel of Capitol Public Finance Group specializes in organizing the Agency's finances to ensure seamless reporting with DWR requirements. He is also working with the Agency's treasurer, the City of Yuba City, to ensure we are all in agreement and that all of the accounts ballance.

Downey Brand also has an amendment for consideration, and Mr. Edgar explained that two attorneys assist the Agency – Scott Shapiro and Andrea Clark. He added that when both attorneys attend a meeting, one person does not bill. Director Owen Stiles asked why a termination date was removed from Downey Brand's amendment. Mr. Edgar responded that it was removed so it was in a consistent format with the Agency's other amendments.

Mr. Edgar added that termination components are included in each contracts; 30 days is the most, but some as little as 10 days.

**A motion was made by Director John Dukes to approve the Operations amendments to consultant agreements for general Agency operations for the last 6 months of the 2010-11 Fiscal Year, including the approval of the Fifth Amendment to the Agreement between SBFCA and Downey Brand LLP for comprehensive legal services for the Agency (Amendment: SBFCA 11-002); the First Amendment to the Agreement between SBFCA and Kennedy Modeste Communications for general administrative services such as Agency administration, finance, public contact, and serving as the Board Secretary (Amendment: SBFCA 11-003); the First Amendment to the Agreement between SBFCA and KNN Public Finance for serving as Financial Advisor (debt financing advice) (Amendment: SBFCA 11-004); and of the First Amendment to the Agreement between SBFCA and Capital Public Finance Group as Financial Advisor (advice pertaining to State required financial planning projections, budgeting, and accounting) (Amendment: SBFCA 11-005). The motion was seconded by Director Owen Stiles and was carried by those present.**

#### INFORMATIONAL AND POSSIBLE APPROVAL ITEMS

8) **Other reports from the Agency Staff regarding current Sutter Butte Flood Control Agency activities.**

Mr. Edgar recapped the design meeting on January 8, 2011 where HDR Engineering provided a preliminary presentation on the 30% design. He explained that there is a lot of internal work to be completed, but the engineers will present the completed 30% design at the March Board of Directors meeting.

He added that the Agency is beginning negotiations on the design grant. Mr. Shapiro added that if anyone is interested in learning more about the Agency counsels' duties to please ask him for information. He explained that counsels' communication is privileged and once that right is waived, it could be waived in other issues. the communication is privileged and if you start waving that, then it could be waved in other issues.

Agency Engineer Dave Peterson informed the Board that a two-day workshop is scheduled for the following day with the Central Valley Flood Protection Board, US Army Corps of Engineering, Department of Water Resources to introduce them to the project.

Public Information Manager Kim Floyd updated the Board on recent activities, including the presentation to the City of Yuba City Council the previous evening. She reported that the Council requested to be apriority location once construction work begins. She said that the design is not complete and there's no ability to phase priorities, but staff will ensure construction is a very fluid process. Director John Dukes added that when FEMA maps Yuba City in, which is anticipated to be in May 2012, all development will stop. Therefore, the Council is looking for construction to start in Yuba City to minimize the amount of time construction is restricted.

**No Action Taken on this Item**

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9) **Report (if necessary) by the Citizens' Assessment District Advisory Committee (CADAC).**

CADAC Chair Ray Rogers updated that Board with the most recent activities, including the adoption of the CADAC by-laws.

Public Information Manager Kim Floyd added that committee met prior to the Board meeting and will request a small change to the committee's charter. The committee proposed, under the adopted CADAC by-laws, the committee members serve at the pleasure of the Agency Board of Directors at any amount of time, which gives the Board maximum flexibility to appoint members as needed. Director John Dukes asked if a provision was included so someone could be replaced if they didn't attend a minimum number of meetings. Ms. Floyd responded that that was included.

The next meeting CADAC meeting is scheduled for April, 2011 when Executive Director Bill Edgar will present that Two-Year Budget and outline the Agency organization.

**No Action Taken on this Item**

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- 10) Report by Levee District No. 1 regarding setback levee project at Star Bend (an early implementation project).

No report at this time.

**No Action Taken on this Item**

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- 11) Report by the United States Army Corps of Engineers' (USACE) project manager re: current status of the Feasibility Study for the Sutter Basin.

No report at this time.

**No Action Taken on this Item**

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- 12) Report (if necessary) by the Dept. of Water Resources (DWR) Senior Project Manager regarding DWR activities.

No report at this time.

**No Action Taken on this item**

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**CORRESPONDENCE**

- 13) Response to Correspondence Received

Mr. Edgar stated that there was no correspondence to be considered at this meeting.

**No Action Taken on this item**

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**PUBLIC COMMENT**

No public comment at this time.

**ADJOURNMENT**

With no further business coming before the Board, the meeting was adjourned at 3:15 p.m.

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JOHN MILLER, VICE CHAIR

ATTEST BY: \_\_\_\_\_



# Sutter Butte Flood Control Agency

*A Partnership for Flood Safety*

February 9, 2011

**TO:** Board of Directors

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

**SUBJECT:** Receipt and file of three Board of Senior Consultant contracts: RiverSmith Engineering, Inc.; George Sills Geotechnical Engineering Consultant, LLC; and Donald Babbitt, PE.

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As required by the DWR and U.S. Army Corps of Engineers, three independent engineers have been selected to serve as the Agency's Board of Senior Consultants. The consultants were recommended by the design team, and have worked on other area projects, such as the SAFCA project.

The Board of Senior Consultants act as an independent panel of experts that offer guidance and recommendations on the final project design. The independent Board will serve in this capacity throughout the design and construction phases.

A summary of the respective scopes of work for the pre-design phase are attached in the attached contracts.

This item is informational only and does not require Board action.

Thank you.

**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR ENGINEERING SERVICES ("Agreement") is made and entered into this 10 day of Jan., 2011, by and between Sutter-Butte Flood Control Agency ("SBFCA"), and RiverSmith Engineering Inc., ("Contractor") (each a "party" and collectively "the parties").

**RECITALS:**

- A. SBFCA has determined that it is desirable to retain a contractor for engineering services; and
- B. Contractor represents that it possesses the qualifications, experience, and facilities necessary to perform the services contemplated herein and has proposed to provide those services; and
- C. SBFCA desires to retain Contractor to perform the proposed services.

**AGREEMENT:**

SBFCA and Contractor agree as follows:

- 1. Scope of Services. Contractor shall provide the engineering services as described in Exhibit 'A', during the term described in Section 2, and for the compensation described in Section 3.
- 2. Term of Agreement. Contractor shall begin performance of its services as of the date of execution of this Agreement and shall continue until the project is completed as agreed or the Agreement is terminated pursuant to the provisions of Section 17, below.
- 3. Compensation.
  - A. The compensation to be paid by SBFCA to Contractor for services as described in Exhibit 'A' shall be in accordance with Contractors Rate Schedule provided in Exhibit 'B', but not to exceed forty thousand dollars (\$40,000). Contractor shall be reimbursed for out-of-pocket expenses incurred for travel, postage and delivery, and long-distance telephone charges. Contractor shall provide SBFCA with an itemized statement of expenses by category of expense as part of each monthly billing statement.
  - B. SBFCA shall make no payment to Contractor in any greater amount for any extra, further, or additional services, unless such services and payment therefore have been mutually agreed to and this Agreement has been formally amended in accordance with Section 21 of this Agreement.
  - C. Contractor agrees to testify at SBFCA's request if litigation is brought against SBFCA in connection with Contractor's work. Unless the action is brought by Contractor or is

based upon Contractor's negligence or intentional tortious conduct, SBFCA will compensate Contractor for the testimony at Contractor's hourly rate as provided in Exhibit 'B'.

4. Invoice, Payments, Notices. Contractor shall submit monthly invoices for services rendered during the preceding month and expenses incurred. SBFCA shall pay invoices that are undisputed within thirty (30) days of receipt and approval. The parties agree to exercise good faith and diligence in the resolution of any disputed invoice amounts.

All invoices, notices, or other documents concerning this Agreement shall be served as follows:

**If to SBFCA:**

Sutter Butte Flood Control Agency  
Sarah Modeste  
1227 Bridge Street, Suite C  
Yuba City, CA 95991

**If to Contractor:**

Thomas W. Smith, PE, GE  
RiverSmith Engineering Inc  
1104 Corporate Way  
Sacramento, CA 95831

5. Independent Contractor.

A. Contractor (including Contractor's employees) is an independent contractor and no relationship of employer-employee exists between the parties. SBFCA is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and as an independent contractor, Contractor indemnifies and holds SBFCA harmless from any and all claims that may be made against SBFCA based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

B. Contractor, in the performance of its obligation hereunder, is subject to the control or direction of SBFCA as to the designation of tasks to be performed and the results to be accomplished but not as to the means and methods used by Contractor for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor.

D. As an independent contractor and not an employee of SBFCA, Contractor shall have no right to act on behalf of SBFCA as its agent or have the authority to bind SBFCA to any obligation.

6. Authority of Contractor. It is understood that Contractor is to provide information, research, advice, recommendations, and consultation services to SBFCA. Contractor shall possess no authority with respect to any SBFCA decision. SBFCA is responsible for and shall make all governmental decisions related to work of Contractor.

7. Subcontracting and Assignment. Contractor shall not subcontract or assign any portion of the work to be performed under this agreement without the prior written consent of SBFCA.

8. Ownership of Work Product. All technical data, evaluations, plans, specifications, reports, documents, or other work products of Contractor shall become the property of SBFCA and shall be delivered to SBFCA upon completion of services. Contractor may retain copies for its files and internal use, however, Contractor shall not disclose any of the work product of this Agreement to any third party, person, or entity, without prior written consent of SBFCA. Upon reasonable notice, SBFCA representatives shall have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of the Agreement. Contractor may not publish information obtained in connection with services rendered under this Agreement.

9. Indemnification. Contractor shall indemnify, defend, and hold harmless SBFCA, its officers, employees, and agents from and against any and all claims, loss, costs, expenses (including, but not limited to, attorney's fees and costs incurred by SBFCA), injury, or damage caused by the recklessness, negligent acts or omissions, or intentional misconduct of Contractor, its employees, officers, or agents, or any of its contractors or subcontractors used in performance of this Agreement.

10. Insurance. Without limiting Contractor's indemnification of SBFCA, Contractor shall provide and maintain at its own expense during the term of this Agreement the following insurance coverages and provisions:

A. Prior to commencement of this Agreement, Contractor shall provide certificates of insurance certifying that all coverage as required herein has been obtained and remains in force for the period required by this Agreement. Any required endorsement shall be attached to the Certificate or certified as issued on the Certificate. All Certificates of Insurance shall be sent to the following address:

Sutter Butte Flood Control Agency  
Sarah Modeste  
1227 Bridge Street, Suite C  
Yuba City, CA 95991

Contractor shall not proceed with the work under this Agreement until it has obtained all insurance required and Certificates of Insurance have been provided to SBFCA. All Certificates of Insurance shall provide that SBFCA shall receive thirty (30) days advance written notice of cancellation or major modification before the expiration date. *See clarification attached*

B. Should, consistent with the terms of this Agreement, any of the work under this Agreement be subcontracted, Contractor shall require each of its subcontractors to provide the insurance required herein, or Contractor may name the subcontractors as additional insureds under its own policies. *JWS 9/10/11*

C. Insurance Required:

(i) Comprehensive General Liability Insurance or Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than one million dollars (\$1,000,000) each occurrence and written on an occurrence basis. If the insurance has a General Aggregate it must be no less than two million dollars (\$2,000,000). Each type of insurance shall include coverage for premises/operations, products/completed operations, contractual liability, broad form property damage, and personal injury.

For either type of general liability insurance, coverage shall include the following endorsements:

a. Additional Insured Endorsement: Insurance afforded by this policy shall also apply to SBFCA, and members of the Board of Directors of SBFCA, the officers, agents and employees of SBFCA, individually and collectively, as additional insureds.

b. Primary Insurance Endorsement: Insurance afforded by the Additional Insured Endorsement shall apply as primary insurance, and other insurance maintained by SBFCA, its officers, agents and employees shall be excess only and not contributing with insurance provided under this policy.

c. Notice of Cancellation or Change of Coverage Endorsement: Insurance provided by this policy shall not be cancelled or changed so as to no longer meet the specified SBFCA insurance requirements without thirty (30) days prior written notice of such cancellation or change being delivered to SBFCA at the address as specified above.

d. Severability of Interest Endorsement: Insurance provided by this policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit brought, except with respect to the policy's limits of liability.

(ii) Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than one million dollars

A. Contractor shall be solely responsible for the quality and accuracy of its work and the work of its Contractors performed in connection with this Agreement. Any review, approval, or concurrence therewith by SBFCA shall not be deemed to constitute acceptance or waiver by SBFCA of any error or omission as to such work.

B. Contractor shall coordinate the activities of all sub-Contractors and is responsible to ensure that all work products are consistent with one another to produce a unified, workable, and acceptable whole functional product.

C. SBFCA shall promptly notify Contractor of any defect in Contractor's performance.

13. Audit. The following audit requirements apply from the effective date of this Agreement until three years after SBFCA's final payment:

A. Contractor shall allow SBFCA's authorized representatives' reasonable access during normal business hours to inspect, audit, and copy Contractor's records as needed to evaluate and verify any invoices, payments, and claims that Contractor submits to SBFCA or that any payee of Contractor submits to Contractor in connection with this Agreement. 'Records' includes, but is not limited to, correspondence, accounting records, sub-Contractor files, change order files, and any other supporting evidence relevant to the invoices, payments, or claims.

B. SBFCA and Contractor shall be subject to the examination and audit of the State Auditor, at the request of SBFCA or as part of any audit of SBFCA. Such examinations and audits shall be confined to matters connected with the performance of this Agreement including but not limited to administration costs.

C. The provisions of Section 13 shall survive the expiration or termination of this Agreement.

14. Publication of Documents and Data. Contractor shall not publish or disclose to any third party documents or data without the prior written consent of SBFCA. However, submission or distribution to meet official regulatory requirements, or for other purposes authorized by this agreement, shall not be construed as publication in derogation of the rights of either SBFCA or Contractor.

15. Interest of Contractor. Contractor covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner with the performance of services required to be performed pursuant to this Agreement. Contractor further covenants that in the performance of this work, no person having any such interest shall be employed.

16. Employment Practices. Contractor, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability, or marital status in its employment practices.