

June 17, 2016  
Sacramento, California

The Board of Trustees of the American River Flood Control District met in special session in its office at 185 Commerce Circle, Sacramento, CA at 11:00 a.m. on Friday, June 17, 2016. In attendance were Trustee Simon, Trustee Holloway, Trustee Redway, Trustee Shah, and Trustee Pavão. Trustee Simon presided. Also present from the District were General Manager Tim Kerr, Superintendent Richard Marck, Office Manager Michelle Wilder, and District Counsel David Aladjem. No members of the public were present.

*Item No. 1 Public Comments on Non-Agenda Items:* There were no comments on non-agenda items from members of the public.

*Item No. 2 Closed Session: Conference with Legal Counsel—Potential Litigation (1 Case):* At 12:00 p.m. the Trustees met in closed session with District Counsel Aladjem and GM Kerr. The Board returned to open session at 12:07 p.m. No reportable action was taken. This item was heard out of order.

*Item No. 3 City of Sacramento's Sutter's Landing Bike Trail and Ramp Construction: Memorandum of Understanding between American River Flood Control District and the City of Sacramento (Third Amendment to Operation and Maintenance Agreement for Two Rivers Trail-Phase II):* GM Kerr provided the Board with a copy of a letter he received on June 16, 2016 from Christopher Conlin, Director of Parks and Recreation for the City of Sacramento. The letter confirms the agreement between the City and the District to pay the District for the design and grading work within 30 days after the receipt of Proposition 40 grant funds from the State.

Trustee Redway stated that the letter covers the issue of the check and gives the District assurance that the City will issue a new check. Trustee Shah commented that the letter received from Mr. Conlin covers the City but not the Board and GM Kerr. He requested a paper trail and documentation to indicate that the Board is returning the check, issued in error, pursuant to the agreement, and requesting the third amendment to the MOU be signed by the City. Trustee Redway suggested that the check be returned with a letter from the District noting receipt of Mr. Conlin's letter and indicating that the District expects payment when funding is received from the State pursuant to the timetable in Mr. Conlin's letter. Trustee Pavão noted that not immediately depositing a check for rendered services is highly irregular as is returning a check without a specific request from the payor.

District Counsel Aladjem noted that sending a letter in response to Mr. Conlin's letter noting the terms outlined in said letter could create a legally binding contract. Trustee Shah commented that transparency is not stated in Mr. Conlin's letter and reiterated that the District's response should indicate that we believe the check was issued in error and is being returned in good faith that the City will pay the District at a later date. Trustee Holloway noted that the District needs to be paid and we should accept this letter as their commitment to pay the District for work completed. Trustee Simon commented that assuming the grant money will be paid by the State the check currently held by the District cannot be regarded as liquid and the District will wait to demand payment until the conditions in Mr. Conlin's letter have been met.

Trustee Pavão made a motion to return the check and indicate in the transmittal letter that the District is returning the check by request of the City, which died for a lack of a second. On a subsequent motion by Trustee Redway seconded by Trustee Holloway, the Board unanimously approved sending a letter to the City returning the check that was issued in response to the June 15<sup>th</sup> letter from Mr. Conlin, noting that the Board understands funding is not currently available therefore the check is being returned, and in reliance upon Mr. Conlin's letter the District is expecting payment when Proposition 40 funds become available to the City. Trustee Shah noted that such a letter would accomplish his previously stated goal of establishing a paper trail related to this issue.

Regarding the MOU Amendment, GM Kerr posed the question of how to satisfy the City and allow the District to complete its role in the project. Trustee Holloway noted that the aforementioned letter was a positive communication from the City. He requested that District Counsel Aladjem keep the protections outlined in the MOU Amendment and add softening introductory language. District Counsel Aladjem agreed to make the recommended changes.

Trustee Redway requested clarification of the steps remaining in the project. Trustee Shah expressed confidence in District Counsel Aladjem and GM Kerr to incorporate language into the MOU Amendment to properly protect the District. He expressed a desire for the document to be explicit about the District's role as well as the end point of the District's participation in the project. Trustee Pavão requested clarification regarding compensation for future work done by the District and the District's contractors. District Counsel Aladjem noted section 4.b. of the MOU Amendment indicates compensation for all work done by the District.

On a motion by Trustee Redway seconded by Trustee Holloway, the Board unanimously approved directing District Counsel Aladjem to make the MOU Amendment consistent with the letter and soften the introductory language. Trustee Redway will contact Mr. Conlin prior to his receipt of the MOU Amendment to explain the goals of the District regarding this project and a desire to maintain a relationship with the City.

*Item No. 4 Questions and Comments by Trustees:* There were no questions or comments by Trustees.

*Item No. 5 Adjourn:* There being no further business requiring action by the Board, the meeting was adjourned by Trustee Simon at 12:07 p.m.

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President