



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

October 3, 2018

Ms. Barbara Bagneris, Chair
Board of Directors
32nd DAA, OC Fair and Event Center
88 Fair Drive
Costa Mesa, California 92626

Dear Ms. Bagneris:

The California Department of Food and Agriculture, Audit Office, has completed its audit of the 32nd District Agricultural Association, OC Fair & Event Center. The final report 17-018 is enclosed.

We appreciate the cooperation and assistance extended to the auditors during the course of the audit. If you have any questions, please call the Audit Office at (916) 900-5026.

Sincerely,

Ron Shackelford, CPA
Chief, Audit Office

Enclosure

cc: Kathy Kramer, Chief Executive Officer

RS:jjj



CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

AUDIT OFFICE



32ND DISTRICT AGRICULTURAL ASSOCIATION
OC FAIR & EVENT CENTER
COSTA MESA, CALIFORNIA

MANAGEMENT REPORT #17-018

YEAR ENDED DECEMBER 31, 2016

32ND DISTRICT AGRICULTURAL ASSOCIATION
OC FAIR & EVENT CENTER
COSTA MESA, CALIFORNIA

MANAGEMENT REPORT
YEAR ENDED DECEMBER 31, 2016

AUDIT STAFF

Ron Shackelford, CPA
Shakil Anwar, CPA
Jason Jones, CPA
Andrew Bradbury

Audit Chief
Assistant Audit Chief
Auditor
Auditor

MANAGEMENT REPORT NUMBER

#17-018

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EXECUTIVE SUMMARY

At the request of the management of the 32nd District Agriculture Association (DAA), OC Fair & Event Center, Costa Mesa, California, for the year ended December 31, 2016, the California Department of Food and Agriculture (CDFA), Audit Office, conducted a compliance audit of the DAA. Our audit objectives were crafted to ensure the DAA complied with state laws and regulations applicable to a state agency.

During the audit, we identified two areas containing reportable conditions. These conditions and accompanying recommendations are considered significant weaknesses: overpayment to an employee and lack of written policies and procedures over the fair's contracting processes. We have provided four recommendations to improve the operations of the Fair. The Fair must respond in writing on how these recommendations will be implemented.

We suggest the Fair implement the recommendations as soon as practicable.

SCOPE

The management of the 32nd District Agriculture Association (DAA), OC Fair & Event Center, requested the California Department of Food and Agriculture (CDFA), Audit Office, to conduct a compliance audit of the DAA. Our audit objectives were as follows:

- Personnel practices are in compliance with policies issued by California Department of Human Resources (CalHR) and applicable union bargaining contracts.
- Internal controls over fixed assets, bank accounts, cash receipt and disbursements, and revenue collection are correctly utilized.
- Contracting practices are in compliance with Board of Directors' policies and procedures, applicable rules, and regulation.

The audit period was January 2016 through December 2016.

METHODOLOGY

To address the audit objectives, we performed the following procedures:

- Performed pre-audit analytical procedures to analyze variances in year-over-year reported figures.
- Reviewed prior audit reports and other information provided by F&E.
- Discussed audit planning with audit manager.
- Reviewed applicable laws, regulations, policies and procedures significant to the audit objectives.
- Interviewed key personnel to gain an understanding of the overall operations and policies of the DAA.

- Reviewed DAA records and source documentation to ensure appropriate records are maintained by the DAA.

In conducting our audit of the 32nd DAA, we obtained an understanding of its internal control structure in order to determine our auditing procedures, as they relate to and that we considered significant within the context of our audit objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal control that were identified during the course of our audit are included in this report.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusion based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

REPORTABLE CONDITIONS**OVERPAYMENT TO A FAIR EMPLOYEE**

The 32nd DAA overpaid an employee for approximately eight months in which the employee did not perform work for the Fair. The 32nd DAA entered into a separation agreement with an employee on June 27, 2016. In the agreement, the employee agreed to end their employment effective February 28, 2017. Although the employee did not work at the 32nd DAA from July 2016 through February 28, 2017, the employee continued to receive their current salary, recruitment and retention (R&R) pay differential, California public employees' retirement system (CalPERS) credit, accrue annual leave, and be enrolled in all of the 32nd DAA's benefit plans in which they were enrolled as of June 2016.

Our analysis of the Fair's payroll records indicates that from July 2016 to February 2017 the costs associated with the agreement were roughly \$74,432. This amount was determined as follows:

- \$44,468 in wages
- \$6,670 in R&R pay differential
- \$5,152 in employer share of medical insurance
- \$13,668 in employer share of PERS contributions
- \$4,474 in additional leave hours accrued and paid out after the employee's final day.

Based on the above information, the 32nd DAA overpaid the employee for work that was not performed and therefore may be considered a gift of public funds.

According to the Department of General Services, (DGS) Memorandum HR memo #03-006 (HR 03-006), the Fair is responsible for the prompt collection of an overpayment by establishing an Accounts Receivable. According to HR #03-006, the statute of limitations to recoup an overpayment is three years from the date of the overpayment.

Recommendations:

1. *The 32nd DAA should notify the employee of the overpayment and seek collection from the employee for \$74,432.*
2. *The 32nd DAA should establish an accounts receivable for this amount until collected.*
3. *The 32nd DAA should contact the CalPERS office to determine if an adjustment is necessary for the additional months of time accrued on the behalf of the employee although the employee did not work during the eight month period.*

INTERNAL CONTROL WEAKNESSES IN CONTRACTING POLICIES AND PROCEDURES

The 32nd DAA did not update established written policies and procedures regarding its contracting process in accordance with Food and Agriculture Code (FAC) 4051, which requires updated written policies and procedures for contracting to be developed internally and maintained by the Fair's Board of Directors. As of October 2017, the 32nd DAA had not complied with this requirement.

Recommendation:

- 4. The 32nd DAA should comply with FAC 4051 by establishing written policies and procedures over its contracting processes.*

DISTRICT AGRICULTURAL ASSOCIATION'S RESPONSE



May 2, 2018

Ron Shackelford, CPA

Chief Audit Office, CDFA

Subject: 2016 audit for the 32nd District Agricultural Association

Dear Mr. Shackelford:

The following information is in response to the audit conducted for the 32nd DAA by California Department of Food and Agriculture Audit Office for the year ending 2016.

REPORTABLE CONDITIONS: OVERPAYMENT TO A FAIR EMPLOYEE

The following summarizes the historical facts leading up to the decision being made by the 32nd DAA. We believe that by removing the employee mentioned in the audit, we avoided significant risk from other actions; loss of work from several staff that called out sick due to the stress caused by her and/or lawsuits by staff that reported to her or other co-workers because of her actions having created a hostile, intimidating and bullying work environment. This journey with the employee began almost from the beginning and escalated over the three years prior to her separation with hundreds of hours spent by OCFEC HR staff and her supervisors, including executive management, trying to remedy the situation. This created stress on this group as well as the rest of the organization.

While there was a progressive discipline path that included CalHR and their legal support, this all culminated when HR staff was approached by the employee and her ACSS representative to request a separation agreement for her. The employee acknowledged that her employment relationship with OCFEC was no longer a good fit for either party and hoped to resolve the matter without a lengthy battle.

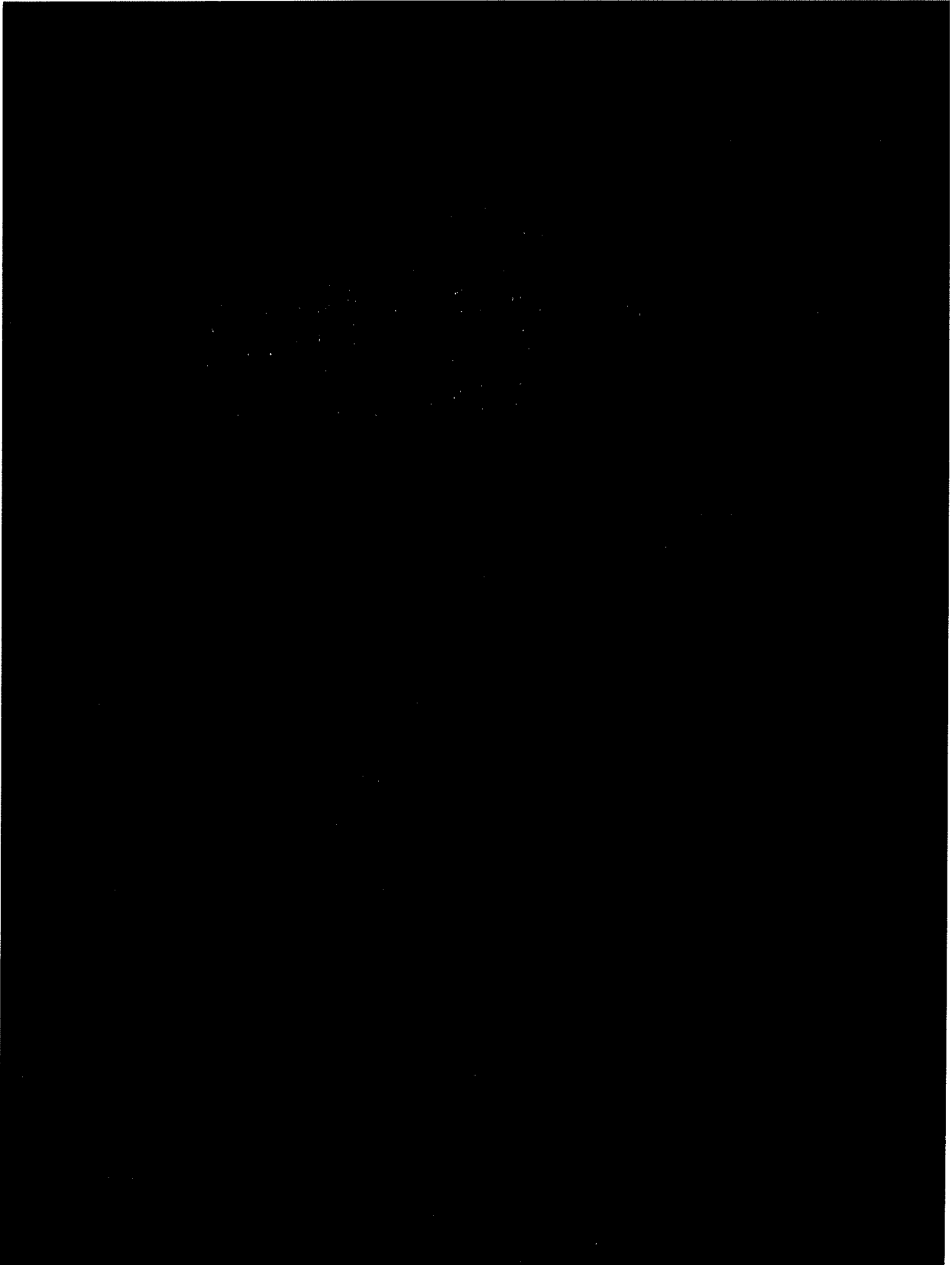
Having precedence from past employee relations situations that included working with CalHR on some instances and outside Counsel (32nd DAA was not affiliated with AG's office from approximately 2008 to late 2015).

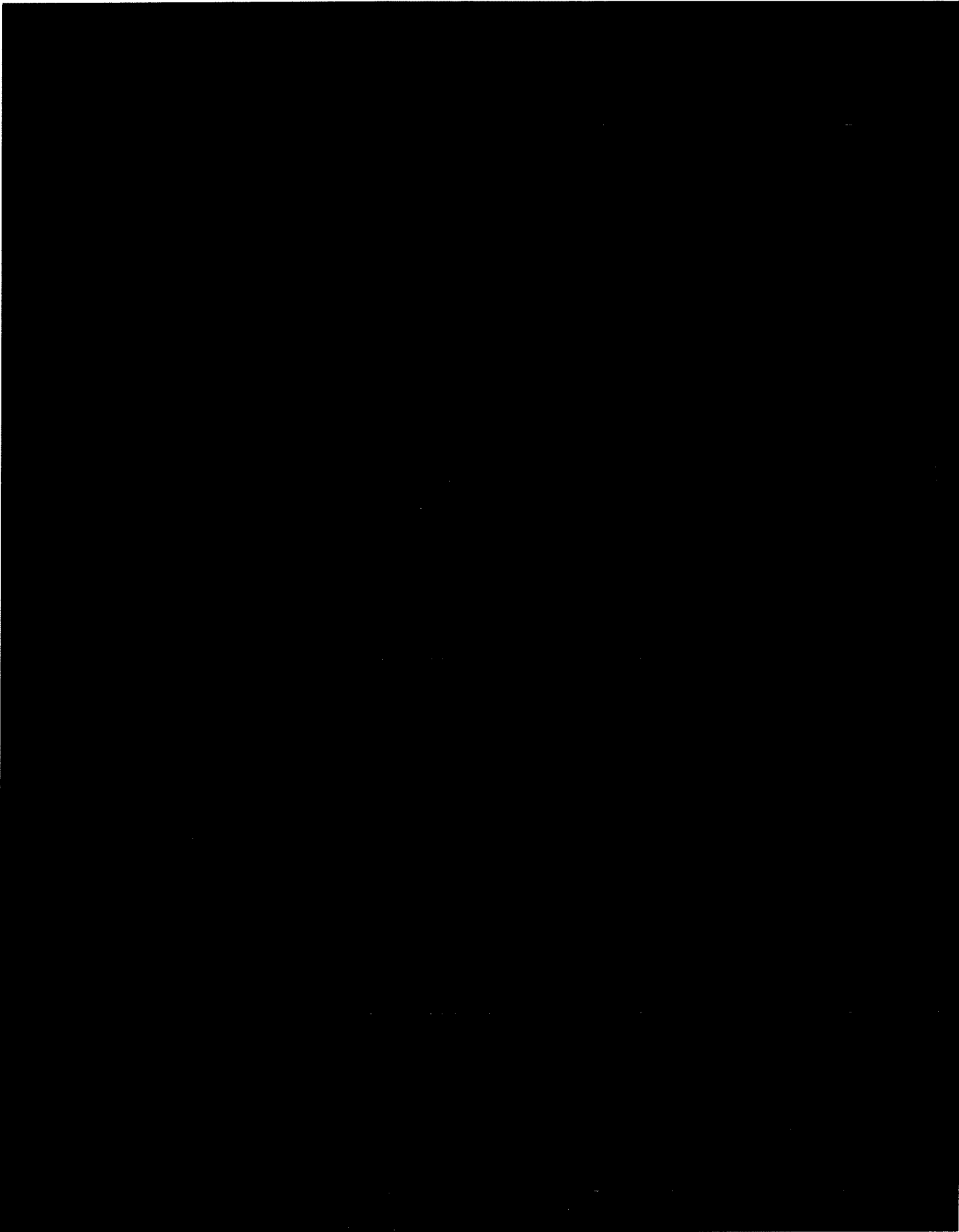
The employee's separation agreement was created from a previously approved CalHR separation agreement that we used as a template.

We had been working with a CalHR legal representative to prepare a 90-day Performance Improvement Plan on the employee prior to her resignation. The Director of HR informed the

CalHR representative verbally that we had come to a separation agreement in which the employee would resign from her employment, so we could close out the case on her.

Background:





In conclusion, because of these long standing employee relations issue with the employee that was all-consuming by those involved, we wholeheartedly believe that the benefits and costs

associated with entering into a separation agreement outweighed risks that were imminent if she was not removed from her employment with the organization. The agreement allowed us to mitigate the financial risk associated with her poor performance and errors as well as reinstating the work environment to a healthy and productive workplace.

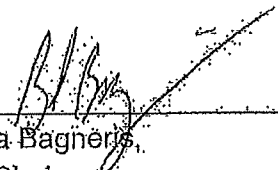
As a result of removing the employee, the work environment in the [REDACTED] Department, as well as across the organization with others who interacted with these departments, improved almost immediately. All employees impacted can now focus their time and energy towards proactive work efforts without unnecessary distractions. It also immediately eliminated the potential liability of her staff filing workman's compensation claims due to stress caused by the toxic work environment.

In the future the 32nd DAA will seek Gal HR approval prior to entering into any separation agreements.

LACK OF WRITTEN CONTRACTING POLICIES AND PROCEDURES

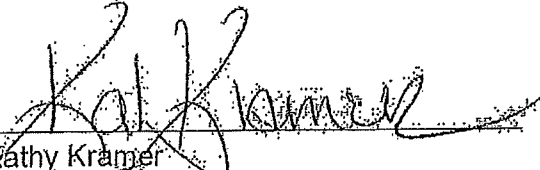
As a matter of background, the 32nd DAA has been and continues to utilize the current State Contract Manual. This manual provides guidelines for all contracting and purchasing requirements.

That said, the 32nd DAA has not submitted the amendment to AB2490 providing changes in contracting and purchasing policies through this new Bill. This amendment will be presented to the 32nd DAA Board of Directors on or before July of 2018 for their approval and adoption.



Barbara Bagheris
Board Chair
32nd District Agriculture Association

Date: 5/23/2018



Kathy Kramer
Chief Executive Officer
32nd District Agriculture Association

Date: 5/23/2018

OCFEC SEPARTION AGREEMENTS

	JOB TITLE	HIRED	SEPARATED	AGREEMENT LENGTH
		1989	2004	12 months
		2000	2005	4 months
		1999	2007	4 months
		2008	2008	0-prob reject
		2008	2008	2 weeks
		2012	2011	2 weeks
		1998	2011	2 weeks
		2012	2012	2 months
		2008	2013	1 month
		2007	2016	8 months
		2016	2016	1 month
		2015	2017	3 months

Please see
page 20 for
revised copy



Board of Directors Agenda Report

MEETING DATE: MAY 24, 2018 ITEM NUMBER: 9B

SUBJECT: Adoption of California State Assembly Bill / Contracting Policies and Procedures

DATE: May 18, 2018

FROM: Kathy Kramer, CEO

PRESENTATION BY: Adam Carleton, VP Finance & Administration

RECOMMENDATION

Adopt AB 2490 and continue to remain compliant with Food and Agricultural Code Section 4051 through the continued use of, and compliance with, all applicable provisions of the California Public Contract Code, the written policies and procedures of the California Department of General Services (DGS) Contract Manual, the written policies and procedures of the California Department of Food and Agriculture (CDFA) Contract Manual for District Agricultural Associations, and the CDFA Board of Directors Handbook.

Policy 2.4 – ASSET PROTECTION from the Board of Directors Governing Policy, section 5 will be amended to reflect adopting AB 2490 as follows:

5. *Adopt AB 2490 and continue to procure any goods or services complying with any and all applicable portions of the California Public Contracts Code, the State Contracting Manual, the Department of General Services' State Administrative Manual and guidelines for procurement.*

BACKGROUND

Effective January 1, 2015, AB 2490 revised several provisions relating to the State's oversight of District Agricultural Associations (DAAs). This bill authorizes fairs to take specified actions without the prior approval of *various* state agencies, eliminates *some* reporting requirements and makes *other* technical changes. A full copy of AB 2490 and the Implementation Guidelines are attached.

The primary impact of AB 2490 was to shift some operating responsibility to the local DAAs, as noted in the Implementation Guidelines.

The District has followed, and will continue to follow, all applicable state laws governing contracts and all policies and procedures that have been previously established for contracts and purchases, including the specific guidelines set forth in the DGS Contract Manual, the CDFA Contract Manual for District Agricultural

Associations, the CDFA Board of Directors Handbook, and all applicable provisions of the California Public Contract Code. Note: the Staff Recommendation does not include the adoption of specific written policies and procedures for contracting outside of the provisions of the DGS Contract Manual, the CDFA Contract Manual for District Agricultural Associations, the CDFA Board of Directors Handbook, and the California Public Contract Code.

CDFA EVALUATION OF RESPONSE

A draft copy of this report was forwarded to the management of the 32nd DAA, OC Fair & Event Center, for its review and response. In their response, the 32nd DAA indicated they will follow the CalHR's rules and regulations going forward; however, the 32nd DAA does not intend to implement the recommendations for the findings reported.

Our office has since reviewed an opinion from the CalHR Legal Division that states in part that the settlement agreement is likely an illegal contract because it violates Government Code section 19991.10 and title 2, section 599.781 of the California Code of Regulations. CalHR Legal Division concluded that despite its illegality, the 32nd DAA likely cannot void the contract and recover the amount paid to the employee. CalHR does agree the DAA should contact the CalPERS to determine if an adjustment is necessary for the eight months accrued between July 2016 and February 2017 during which the employee performed no work for the DAA.

Our office cannot determine whether the 32nd DAA is likely to recover the amounts paid the former employee or if the contract can be voided. Therefore, we continue to recommend the 32nd DAA implement the recommendations as mentioned within the report.

DISPOSITION OF AUDIT RESULTS

The findings in this management report are based on fieldwork that my staff performed between April 7, 2017 and April 28, 2017. My staff met with management on April 27, 2017 to discuss the findings, recommendations, as well as other issues.

This report is intended for the information of the Board of Directors, management, and the Fairs and Expositions Branch. However, this report is a matter of public record and its distribution is not limited.



Ron Shackelford, CPA
Chief, Audit Office

April 28, 2017

REPORT DISTRIBUTION

<u>Number</u>	<u>Recipient</u>
1	Board Chair, 32nd DAA Board of Directors
1	Chief Executive Officer, 32nd DAA
1	Branch Chief, Fairs and Expositions Branch
1	General Counsel, CDFA Legal Office
1	Chief, CDFA Audit Office

OCFEC SEPARTION AGREEMENTS

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8		2012	2012	2 months
9		2008	2013	1 month
10		2007	2016	8 months
11		2016	2016	1 month
12		2015	2017	3 months

Corrected copy
to page 14 of
the report