



## MEMORANDUM

**DATE:** January 21, 2014

**TO:** San Francisco Bay Restoration Authority Governing Board

**FROM:** Amy Hutzl  
San Francisco Bay Area Conservancy Program  
State Coastal Conservancy

**SUBJECT:** San Francisco Bay Restoration Authority Joint Powers Agreement

**ATTACHMENTS:**

- Proposed Joint Powers Agreement Terms
- Proposed Organization Chart

**Summary:** The San Francisco Bay Restoration Authority is considering entering into a joint powers agreement (“JPA”) pursuant to the Joint Exercise of Powers Act (Government Code § 6500 et seq.) with the Association of Bay Area Governments (ABAG) and the State Coastal Conservancy in early 2014. All three entities have authority to further Bay restoration through grant programs. Pursuant to a JPA, ABAG and the Conservancy could contribute their knowledge, expertise and established programs to implementation of the Authority’s grant program. A JPA would enable the entities to maximize efficiency through collaboration. Attached for discussion at the Authority’s January 29, 2014 Board meeting is a list of proposed terms for a JPA and a related draft organization chart showing how the entities would work together.

**Timeline**

- January 16: ABAG staff received authorization of their Executive Board to negotiate and enter into a JPA.
- January 23: Conservancy Board to discuss draft terms of a JPA.
- January 29: Authority Governing Board to discuss draft terms of a JPA.
- February 26 or March 19: Authority staff to seek Governing Board authorization to enter into a JPA.
- March 27: Conservancy staff to seek Conservancy Board authorization to enter into a JPA.
- April : Execute JPA and assume responsibilities

**Background and Discussion:**

The Authority receives no funding from the State and does not currently have access to any other fiscal resources. Since 2008, at no cost to the Authority, several ABAG staff members have served as temporary staff to the Authority and the Conservancy has provided assistance.

ABAG staff, in their dual capacity as Authority staff and ABAG staff, and Conservancy staff have been discussing a possible JPA between the Authority, ABAG and the Conservancy. The Joint Exercise of Powers Act authorizes public entities to enter into an agreement to jointly exercise any power common to the parties. (See Government Code § 6502). The Authority, ABAG and the Conservancy all have the power to grant funds for projects that restore the Bay. A JPA would enable the three entities to collaborate so as to avoid redundancy and to economically and efficiently implement their grant programs.

Pursuant to a JPA, ABAG staff and Conservancy staff could function as staff to the Authority, thereby bringing their expertise and established programs to implementation of the Authority's grant program. Under the current draft proposal, Conservancy staff would perform the executive and program staff functions for the Authority while ABAG would perform some program staff functions as well as act as treasurer to the Authority. If a revenue measure passes, the Authority would pay the actual costs for ABAG and the Conservancy based on budgets prepared by ABAG and the Conservancy and approved by the Authority. This approach maximizes use of the Authority's tax revenues through use of the Conservancy's existing San Francisco Bay Area Conservancy Program and ABAG's existing infrastructure rather than building a stand-alone staff structure for Authority. It also avoids redundancy of both the Authority and the San Francisco Bay Area Conservancy Program awarding grants for Bay restoration.

The project management costs associated with the parcel tax will likely be capped at 5% to assure voters that the tax revenues will be used efficiently. ABAG and the Conservancy have developed a staffing proposal that reflects the need to minimize administrative costs while effectively implementing a transparent and results-oriented grant program as well as providing the necessary fiscal and budgetary management.

# JOINT POWERS AGREEMENT

## SFBRA/ABAG/SCC

### PROPOSED TERMS

January 17, 2014

#### 1. Parties to the Agreement

- San Francisco Bay Restoration Authority (“SFBRA”)
- Association of Bay Area Governments (“ABAG”)
- California State Coastal Conservancy (“SCC”)

#### 2. Purpose of the Agreement

- The purposes of this agreement are to operate the SFBRA through existing agencies that have the capacity and expertise necessary to carry out the SFBRA’s mission under the guidance of its Government Board, and to maximize efficiency, avoid redundancy, minimize costs, ensure accountability and coordinate closely to achieve these purposes.

#### 3. Staffing Responsibilities for SFBRA Act Implementation

- **Executive Officer – SCC:** Overall responsibility for implementation of San Francisco Bay Restoration Authority Act under direction of the SFBRA Governing Board. Executive responsibilities include prepare strategic plan and budget; assure compliance with special tax measure requirements and other revenue restrictions; manage SFBRA public meetings; coordinate Advisory Committee; manage external communications; consult with ABAG; and direct project staff.
- **Program Staff –SCC and ABAG:** Under direction of the Executive Officer, perform program staff functions, including: development of procedures for grant evaluation and prioritization, review applications, prepare grants and contracts, oversee projects, and review invoices. SCC and ABAG will decide jointly which program staff functions will be performed by ABAG taking into account ABAG expertise. ABAG is expected to contribute approximately 20-25% of program staff.
- **Treasurer/Fiscal Agent – ABAG:** Under the direction of the SFBRA Governing Board, receive, safeguard, invest, and disburse funds; collect taxes from counties; perform fiscal audits; provide accounting; prepare and submit internal and external financial reports; make recommendations regarding risk management and procure adequate insurance on behalf of SFBRA.

- **Legal – SCC:** Advise the SFBRA Governing Board and staff, retain and manage outside counsel to represent SFBRA in the event of litigation. ABAG to provide legal advice in the event of a conflict of interest by SCC that is not waived by SFBRA and SCC.
- **Clerk of the Board: SCC:** Maintains the official records of SFBRA, calls and notices meetings in accordance with law, responsible for notifying Governing Board members of FPPC filing requirements and maintaining FPPC filings, and provides clerical and logistical support to Governing Board members.
- **Information Technology – ABAG:** Maintain and manage website on behalf of SFBRA in accordance with written protocols and procedures.

#### 4. **Date Parties Assume Their Obligations**

- Parties assume their respective responsibilities upon execution of JPA. This will transition the Executive Officer, Legal Counsel and Clerk of the Board functions from ABAG to SCC.

#### 5. **Duration**

- JPA remains in effect until January 1, 2029; can be extended by written agreement of the parties.
- SFBRA can terminate JPA upon 180 days written notice to SCC and ABAG.
- ABAG and SCC can withdraw from the JPA upon 180 days written notice; remaining parties may amend agreement to reallocate responsibilities, add other parties, or terminate.

#### 6. **Payment**

- Staff services or other allowable costs incurred by the parties after a revenue measure passes (even if it is not effective immediately) are eligible for reimbursement by the SFBRA; staff services or other costs incurred by the parties before the measure passes, or if it fails to become effective, are the sole responsibility of the entity incurring the costs.
- SFBRA will reimburse ABAG and SCC for their actual costs in carrying out responsibilities under this agreement, incurred after passage of the measure, consistent with a budget approved in advance by the SFBRA Governing Board. Actual costs include costs of contracts for goods and services, staff costs at fully burdened rates for each applicable job classification, and travel essential to carrying out responsibilities under this agreement. ABAG and SCC will promptly notify SFBRA’s Governing Board if costs may exceed the budget. Such notice will include proposals for reducing costs and/or an estimate of the exceedances. Exceedances will be paid only if the budget is amended to include them.

## 7. **Indemnification**

- Options:
  - Option 1: SFBRA agrees to indemnify ABAG and SCC for tort liability arising out of performance of this agreement.
  - Option 2: ABAG and SCC agree to indemnify SFBRA for tort liability arising out of performance of this agreement.
  - Option 3: No indemnification for tort liability; under existing law, each public entity is jointly and severally liable, and obligated to contribute one-third to tort liability.
  - Option 4: Each public entity agrees to indemnify the others for tort liability associated with actions of their own employees in performance of this agreement.
- Counsel to SFBRA intends to recommend Option 2 to SFBRA.

## 8. **Audits and Accountability**

- ABAG will fulfill SFBRA's statutory obligation to provide for regular audits of the SFBRA's accounts and records, and shall maintain accounting records and shall report accounting transactions in accordance with generally accepted accounting principles adopted by the Government Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the State Controller. (Govt. Code 66705(a).)
- ABAG will fulfill SFBRA's statutory obligation to provide for annual financial reports and to make copies of the annual financial reports available to the public. (Govt. Code 66705(b).)
- SFBRA may order independent audits.
- SCC will perform its responsibilities in accordance with applicable laws, the SFBRA enabling law and guidelines created by SFBRA.

## 9. **Communication and Coordination Among Parties to the Agreement**

- The parties will cooperate and coordinate to ensure maximum efficiency, economy and quality of support for the SFBRA. Coordination will include regular communication between SCC and ABAG staff regarding management and policy issues, as well as how effectively the agencies are working together and satisfying their responsibilities under this agreement.

- ABAG will provide SCC monthly summaries of SFBRA fund balances, interest, income, and expenditures, including allocation among subaccounts, if any.
- SCC will provide ABAG quarterly projections of cash needs.

**10. Procedures**

- SCC will draft contracting process and other necessary procedures for approval by SFBRA Governing Board.

**11. Participation Requirements**

- Contracts for materials, supplies and services shall meet State of California objectives for participation by small businesses and disabled veteran business enterprises.

**12. Amendment**

- This term should provide that the agreement can be amended only by a written amendment signed by all parties.



## PROPOSED SFBRA/ABAG/SCC JOINT POWERS AGREEMENT ORGANIZATION CHART

