



Resolution No. 34

AUTHORIZATION TO ENTER INTO RESTATED AND AMENDED JOINT POWERS AGREEMENT WITH STATE COASTAL CONSERVANCY AND ASSOCIATION OF BAY AREA GOVERNMENTS

WHEREAS, in 2008, the State established the San Francisco Bay Restoration Authority (the “Authority”) for the purpose of assisting in the restoration, enhancement, protection and enjoyment of the wetlands and wildlife in the San Francisco Bay and shoreline, including raising funds for programs that would protect and restore the Bay;

WHEREAS, the Authority is a regional governmental entity comprising the nine counties that touch the San Francisco Bay: the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma, and the City and County of San Francisco (such nine counties, collectively, the “San Francisco Bay Area”) (hereafter, all references to “county” or “counties” include the City and County of San Francisco);

WHEREAS, on June 7, 2016, voters passed the Authority’s San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (“Measure AA”), which imposes a special parcel tax of twelve dollars (\$12) per year for twenty (20) years on each parcel wholly or partially in the nine counties of the San Francisco Bay Area to fund the programs identified in the measure;

WHEREAS, the Authority, the State Coastal Conservancy (“Conservancy”) and the Association of Bay Area Governments (“ABAG”) desire to reduce redundancy and increase efficiency by jointly carrying out their common grant-making powers in the expenditure of Measure AA funds;

WHEREAS, on October 24, 2016, the Conservancy, ABAG and the Authority entered into a joint powers agreement that provides for the Conservancy and ABAG to perform staff functions for the Authority (“JPA”);

WHEREAS, ABAG and the Metropolitan Transportation Commission (“MTC”) signed a Contract for Services on May 30, 2017, whereby MTC assumed administrative and staffing responsibilities for ABAG, commencing July 1, 2017.

WHEREAS, ABAG and the Conservancy will, on November 16, 2017 and November 30, 2017, respectively, consider authorizing entry into a restated and amended joint powers agreement to acknowledge that MTC will fulfill the staffing responsibilities assigned to ABAG in the JPA.

NOW THEREFORE, THE SAN FRANCISCO BAY RESTORATION AUTHORITY GOVERNING BOARD HEREBY RESOLVES, DETERMINES AND ORDERS AS FOLLOWS:

Section 1. Authorization to Amend Joint Powers Agreement.

The Authority hereby authorizes the Chair to amend the JPA by executing the *Restated and Amended Joint Powers Agreement of the San Francisco Bay Restoration Authority, State Coastal Conservancy and Association of Bay Area Governments* attached hereto as Exhibit 1 or substantially similar version.

Section 2. Approval of MTC Staffing.

The Authority understands and accepts the role of MTC and MTC staff under the Contract for Services between ABAG and MTC, and accepts the role of MTC and MTC staff in fulfilling the ABAG operating and staffing role contemplated in the JPA.

PASSED AND ADOPTED by the Governing Board of the San Francisco Bay Restoration Authority at its meeting on November 3, 2017, by the following vote:

AYES: Governing Board Members _

NOES: Governing Board Members _

ABSENT: Governing Board Members _

ABSTAIN: Governing Board Members _

Dave Pine, Chair

I, Anulika White, Clerk of the Governing Board of the San Francisco Bay Restoration Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the Governing Board of the San Francisco Bay Restoration Authority at its meeting of November 3, 2017, which Resolution is on file in the office of this regional governmental entity.

Anulika White, Clerk

RESTATED AND AMENDED

JOINT POWERS AGREEMENT

of the

**San Francisco Bay Restoration Authority, State Coastal Conservancy
and Association of Bay Area Governments**

THIS JOINT POWERS AGREEMENT (“Agreement”), made, entered into and effective as of October 24, 2016 (“Effective Date”), is amended and restated as of November 1, 2017 ~~made and entered into~~ by and between **STATE COASTAL CONSERVANCY**, an agency of the State of California, the **ASSOCIATION OF BAY AREA GOVERNMENTS**, a joint powers authority comprising cities and counties of the San Francisco Bay Area, and the **SAN FRANCISCO BAY RESTORATION AUTHORITY**, a regional entity, with reference to the following facts:

RECITALS

- A. The San Francisco Bay Restoration Authority (“Authority”) is a regional entity established by the San Francisco Bay Restoration Authority Act, California Government Code section 66700 et seq. (“Restoration Authority Act”) that is charged with raising and allocating funds for the protection and enhancement of tidal wetlands and other wildlife habitat in and surrounding the San Francisco Bay and for related public access and flood protection and that successfully placed the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (“Measure AA”), a regional special tax measure, on the June 2016 ballot to raise such funds.
- B. The State Coastal Conservancy (“Conservancy”) is a state agency established pursuant to Division 21 of the California Public Resources Code that is authorized to award grants in the nine-county San Francisco Bay Area to help achieve Division 21’s goals for the San Francisco Bay Area, which include the protection, restoration and enhancement of natural habitats and improved public access to and around San Francisco Bay.
- C. The Association of Bay Area Governments (“ABAG”) is a joint powers authority of the cities and counties of the nine-county San Francisco Bay Area with the authority to perform regional and subregional planning and to coordinate with other governmental entities including federal, state and regional agencies via the San Francisco Estuary Partnership (“SFEP”), which implements programs and awards

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grants for protection and enhancement of San Francisco Bay.

C.D. The Metropolitan Transportation Commission (“MTC”) is a regional transportation planning agency established pursuant to California Government Code Section 66500, et seq. On May 30, 2017, MTC and ABAG entered into a Contract for Services (“CS”) under which MTC assumed staff functions for ABAG, commencing July 1, 2017. As of July 1, 2017, ABAG employees transitioned to MTC employees. All MTC employees constitute MTC consolidated staff. Pursuant to the CS, MTC will fulfill the staff obligations assigned to ABAG set forth in this Agreement.

D.E. To help achieve the Division 21 goals for the San Francisco Bay Area, Conservancy staff have participated in numerous collaborative efforts of federal, state and local government agencies to prepare plans that reflect the mutual goals of these agencies for protection, enhancement and restoration of San Francisco Bay and associated public access and flood management. The resulting plans include:

- San Francisco Baylands Ecosystem Habitat Goals and its Climate Change Update,
- San Francisco Bay Subtidal Habitat Goals,
- San Francisco Estuary Partnership’s Comprehensive Conservation and Management Plan,
- San Francisco Bay Region’s Integrated Regional Water Management Plan,
- Implementation Strategy of the San Francisco Bay Joint Venture,
- South Bay Salt Pond Restoration Plan and South Bay Shoreline Study, and
- San Francisco Bay Trail Plan.

E.F. The California Natural Resources Agency has developed several plans that include statewide goals for flood protection and for the protection, enhancement and restoration of habitats. The Conservancy’s implementation of Division 21 helps achieve the goals set forth in these plans, which include:

- California Water Action Plan (2016),
- State Wildlife Action Plan (2015),
- Flood Future Report (2013), and
- State of the State’s Wetlands Report (2010, and 2015 Status and Trends Report).

F.G. The Authority desires to benefit from the expertise of ABAG, SFEP and the Conservancy in planning and achieving restoration, enhancement and protection of San Francisco Bay. The Conservancy and ABAG desire to assist the Authority to ensure its successful implementation of the San Francisco Bay Restoration Authority Act and Measure AA. In addition, the Conservancy desires to further the goals for

the San Francisco Bay Area, as set forth in Chapter 4.5 of Division 21 of the Public Resources Code, which will help the California Natural Resources Agency achieve its broader statewide goals. The parties also desire to maximize efficiency and reduce administrative redundancy in order to direct as much of the available funding as possible toward planning and implementation of projects for the protection, enhancement and restoration of San Francisco Bay and associated public access and flood protection.

AGREEMENT

The Conservancy, ABAG and the Authority hereby agree as follows:

1. Purposes of this Agreement

The purposes of this Agreement are to use the capacity and expertise of existing agencies for the operation of the Authority to maximize efficiency, avoid administrative redundancy, minimize costs, and ensure accountability, and to coordinate closely to achieve these purposes.

2. Staffing Responsibilities for Restoration Authority Act Implementation

The Conservancy and ABAG shall provide staff services to the Authority, subject to the terms of this Agreement, for purposes of implementing the Restoration Authority Act and Measure AA. [All staff services assigned to ABAG under this Agreement shall be performed by MTC consolidated staff acting pursuant to the CS.](#) Nothing in this Agreement precludes the Authority from hiring or engaging additional consultants or staff to review or implement any aspects of the Authority's obligations and duties under the Restoration Authority Act and Measure AA following consultation with the Conservancy and ABAG, provided there are sufficient funds available.

[The Authority acknowledges that in](#) performing services for the Authority, Conservancy [staff](#) and [consolidated MTC](#) staff shall do so as employees of their [employer](#)~~respective~~ agencies and shall represent themselves to the public as such. The Authority acknowledges that Conservancy [staff](#) and [consolidated MTC staff](#) ~~ABAG staff members~~ will bring their expertise and perspectives as state and local agency employees to performance of their duties under this Agreement. All parties acknowledge that Conservancy [staff](#) and [consolidated MTC](#) ~~ABAG~~ staff will not provide services beyond those necessary to implement the Restoration Authority Act.

Executive Officer: The Conservancy shall provide Executive Officer services for the Authority under the direction of the Authority's Governing Board. Executive Officer services shall include oversight of compliance with Measure AA requirements and other revenue restrictions; management of Authority public meetings; coordination of the

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Authority Advisory Committee and the Independent Citizens Oversight Committee; management of external communications; consultation with ABAG; consultation with the MTC Executive Director regarding direction of consolidated MTC staff; direction of Conservancy program staff; and other duties that may be delegated to the Executive Officer by the Authority. The Executive Officer may delegate duties to program staff as appropriate.

Program Staff: The Conservancy and ABAG, through MTC consolidated staff pursuant to the CS, shall ~~provide staff members to perform under the program direction of the Executive Officer,~~ program services necessary for the Authority to implement the Restoration Authority Act. MTC consolidated staff will be directed by the MTC Executive Director in consultation with the Executive Officer; Conservancy staff will be directed by the Executive Officer. Program services shall include: preparation of a work plan and budget; development of procedures for grant evaluation and prioritization; review of grant applications; preparation of grants and contracts; oversight of projects and contracts; review of invoices; and preparation of grant and contracting processes and other procedures necessary for the efficient operation of the Authority. The Conservancy and ABAG will jointly agree on the allocation of program staff functions between the Conservancy and ABAG, and will include such allocation in the work program and operating budget. Such allocation shall be communicated in a timely manner to the MTC Executive Director or his designee.

Treasurer/Fiscal Agent: ~~ABAG shall provide a financial officer to act as treasurer to the Authority. The treasurer shall receive, safeguard, invest, and disburse funds; collect taxes from counties; perform fiscal audits; provide accounting services; prepare and submit internal and external financial reports; make recommendations regarding risk management; procure adequate insurance on behalf of the Authority; and perform other financial tasks necessary to assist program staff with implementation of the Restoration Authority Act.~~

Insurance and Risk Allocation: ABAG, through the consolidated MTC staff acting pursuant to the CS, shall provide insurance and risk allocation services and procure, on behalf of the Authority, insurance coverage in the types and amounts that are customary. The Authority shall reimburse ABAG for the funds used to procure such insurance coverage pursuant to paragraph 4 hereof.

Fiscal Agent/Treasurer: -ABAG through the consolidated MTC staff acting pursuant to the CS shall provide Fiscal Agent/Treasurer services to the Authority, which services will be provided pursuant to the CS. Fiscal Agent/Treasurer services shall consist of:

- Receive all taxes collected through counties,
- Receive, safeguard and invest all funds,
- Disburse all funds authorized by the Authority,

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- Provide accounting services for all funds received and disbursed,
- Prepare appropriate financial reports for internal and external use, and
- Arrange for an annual audit of revenue and disbursements.

ABAG, through the consolidated MTC staff pursuant to the CS shall also provide, through the CS, such other financial services as are appropriate to the role of Fiscal Agent/Treasurer and may be requested by the Authority.

Duties of the Fiscal Agent/Treasurer will not include services inappropriate to the financial role including, but not limited to:

- Development of Authority's annual budget with the exception of providing information requested by program staff,
- Grant application, processing and budget,
- Grant, contract or payment approvals,
- Development, documentation, testing and audit of internal financial controls, except to the extent that such financial controls relate to the Fiscal Agent/Treasurer services that ABAG will provide as identified above,
- Program audits and performance reports, with the exception of providing information upon request, and
- Any responsibility for the calculation, placement, collection or reporting of annual property assessment.

Legal: The Conservancy shall provide legal services to advise the Authority Governing Board, the Executive Officer, program staff, Clerk of the Board, and the treasurer on Authority matters. Attorney services shall include preparation of oral and written legal advice; review of and advice regarding staff recommendations, grant agreements and contracts; and retention and management of outside counsel to represent the Authority in the event of litigation. ABAG, through the consolidated MTC staff acting pursuant to the CS, will provide legal services in the event of a conflict of interest that is not waived by the Authority and the Conservancy. The Authority retains the right to obtain independent legal advice and representation at any time.

Clerk of the Board: The Conservancy shall provide a staff member to serve as the meeting clerk for the Authority. The meeting clerk services shall include: maintenance of the official records of the Authority, preparation of meeting notices and agendas, coordination with ABAG for posting official notices on the Authority website, notifying Governing Board

members of Fair Political Practices Commission filing requirements and maintaining FPFC filings, and providing clerical and logistical support to Governing Board members.

Information Technology: ABAG, [through the MTC consolidated staff acting pursuant to the CS](#), shall maintain and manage the Authority website in accordance with written protocols and procedures unless otherwise directed by the Authority's Governing Board. The Conservancy shall maintain and manage electronic records related to the Executive Officer, program staff, legal services, Clerk of the Board and other public records of the Authority.

3. Work Program and Operating Budget

ABAG, [through the MTC consolidated staff acting pursuant to the CS](#), and the Conservancy shall prepare an annual work program and operating budget setting forth their proposed activities and projected costs to implement this Agreement. Such costs shall include direct and indirect costs, including costs for: a) contracts for goods and services, b) staff salaries and benefits, c) overhead, and d) travel essential to carrying out responsibilities under this Agreement. The operating budget shall include projected costs for services necessary for operation of the Authority that will be provided pursuant to contracts directly between the Authority and a service provider.

The annual work program and operating budget will be presented to the Authority's Governing Board for review and approval at least 60 days before the beginning of the next fiscal year.

4. Reimbursement

The Authority shall reimburse ABAG and the Conservancy for all of their costs, both direct and indirect, in implementing this Agreement, provided that the Authority is only obligated to reimburse the Conservancy and ABAG for costs that are consistent with the approved operating budget. ABAG, [through the MTC consolidated staff acting pursuant to the CS](#), and the Conservancy will promptly notify the Authority's Governing Board if costs might exceed the approved operating budget. Such notice will include proposals for reducing costs and/or an estimate of the exceedances. Exceedances will be paid only if the operating budget is amended to include them.

Costs incurred by ABAG and the Conservancy to assist the Authority after July 1, 2016 but prior to execution of this Agreement are eligible for reimbursement by the Authority if consistent with an approved operating budget. Costs incurred by the parties before July 1, 2016 are the sole responsibility of the entity incurring the costs.

Notwithstanding paragraph 2 of this Agreement, neither ABAG nor the Conservancy is obligated to provide any services or incur any costs to implement this Agreement except to the extent that the approved operating budget provides for such services and costs to be

reimbursed by the Authority.

The Authority will reimburse the Conservancy and ABAG pursuant to invoices that identify costs and include supporting documentation. The Conservancy and ABAG will submit invoices to the Authority quarterly. The Authority shall pay invoices of the Conservancy and ABAG within 45 days of presentation of an invoice, except that the invoices for the periods prior to January 1, 2018 shall be paid on January 2, 2018 or as soon thereafter as sufficient funds are available.

5. Indemnification and Insurance

The Authority shall defend and indemnify the Conservancy, ~~and~~ ABAG, MTC, and their officers, agents, board members, and employees for any and all liabilities, claims, demands, damages, or costs, including, without limitation, litigation costs and attorneys' fees, resulting from or arising out of the implementation of this Agreement. This supersedes any right the Authority may have to contribution as provided in California Government Code Sections 895, et seq.

~~The Conservancy and ABAG shall defend and indemnify the Authority, its officers and agents, for any and all liabilities, claims, demands, damages, or costs, including, without limitation, litigation costs and attorneys' fees that are incurred by the Authority, as a result of implementation of this Agreement between the Effective Date and the time that Authority has funds to purchase the insurance recommended by ABAG pursuant to paragraph 2 of this Agreement.~~

6. Audits and Accountability

ABAG, through the MTC consolidated staff, acting pursuant to the CS, will fulfill the Authority's statutory obligation to provide for regular audits of the Authority's accounts and records, and shall maintain accounting records for revenue and disbursements and shall report accounting transactions in accordance with generally accepted accounting principles adopted as applied through 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.~~

ABAG through the MTC consolidated staff acting pursuant to the CS will fulfill the Authority's statutory obligation to provide for annual financial reports and to make copies of the annual financial reports available to the public.

In addition, as required by Section 3(C) of Measure AA passed on June 7, 2016, the

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Authority shall order an annual independent audit of all revenues and expenditures from the proceeds of the special tax authorized by Measure AA. Following consultation with the Conservancy and ABAG and provided there are sufficient funds available, the Authority may also order an independent management audit to review and make recommendations regarding implementation of this Agreement. The Conservancy and ABAG will cooperate with, and make their Authority- related records available to, outside auditors, and the Conservancy will make its Authority- related records available to ABAG for the audits ABAG [through the MTC consolidated staff acting pursuant to the CS](#) -performs pursuant to this section.

The Conservancy and ABAG [through the MTC consolidated staff acting pursuant to the CS](#) will perform their responsibilities in accordance with applicable laws, including the California Public Records Act, the Restoration Authority Act, and guidelines adopted by Authority.

7. 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 Authority. Coordination will include regular communication between ~~the staffs of the~~ Conservancy [staff](#) and [the MTC consolidated staff acting pursuant to the CS provided by ABAG](#) regarding management and policy issues, as well as how effectively the parties are working together and satisfying their responsibilities under this Agreement.

ABAG, [through the MTC consolidated staff acting pursuant to the CS](#), will give the Conservancy monthly summaries of Authority fund balances, interest, income, and expenditures, including allocation among subaccounts, if any. ABAG, [through the MTC consolidated staff acting pursuant to the CS](#) will provide a financial report at each meeting of the Authority's Governing Board.

The Conservancy, ABAG, [through the MTC consolidated staff acting pursuant to the CS](#), and the Authority's Governing Board will coordinate closely regarding the Authority's cash needs.

8. Participation Requirements

In contracting for materials, supplies and services on behalf of the Authority, Conservancy staff will seek to meet State of California objectives for participation by small businesses and disabled veteran business enterprises.

9. Assumption of Obligations

The parties shall assume their respective responsibilities upon the Effective Date of this Agreement. This will transition the Executive Officer, Legal Counsel and Clerk of the Board

functions from ABAG to the Conservancy.

10. Duration and Termination

Upon 90 days' prior written notice to ABAG and the Conservancy, the Authority's Governing Board may adopt a resolution to terminate this Agreement, which termination will be effective on June 30 of that calendar year, or if after June 30 in any year, the immediately following June 30.

If both ABAG and the Conservancy wish to terminate this Agreement, they may do so upon 180 days' prior written notice to the Governing Board of the Authority, with termination to be effective on June 30 of that calendar year, or if after June 30 in any year, the immediately following June 30.

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If ABAG or the Conservancy wishes to withdraw from this Agreement, the withdrawing party will no longer be a party to this Agreement on the 180th day after giving the Authority's Governing Board written notice of its desire to withdraw, to be effective on June 30 of that calendar year or if after June 30 in any year, the immediately following June 30.

The remaining parties may elect to either terminate this Agreement or to amend this Agreement to remove the withdrawing party, provided that such termination or amendment will take effect no sooner than the date the withdrawing party is no longer a party to this Agreement.

Upon termination of this Agreement, no party will have any further obligations to the other parties except that the indemnification obligations of the parties under paragraph 5 of this Agreement will survive termination of this Agreement. Upon withdrawal of ABAG or the Conservancy, the withdrawn party will have no further obligations under this Agreement; provided however, that the indemnification provisions of paragraph 5 will survive as to the withdrawn party.

11. Amendment

No amendment to this Agreement will be valid unless made in writing and signed by all parties.

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This Agreement is executed as follows:

STATE OF CALIFORNIA acting by and through the STATE COASTAL CONSERVANCY

By: _____
Samuel Schuchat, Executive Officer

Date: _____

ASSOCIATION OF BAY AREA GOVERNMENTS

By: _____
~~Brad Paul, Acting~~ Steve Heminger, Executive Director

Date: _____

SAN FRANCISCO BAY RESTORATION AUTHORITY

By: _____
Dave Pine, Chair of the Governing Board

Date: _____