

CONTRACT FOR SERVICES

between

METROPOLITAN TRANSPORTATION COMMISSION

and

ASSOCIATION OF BAY AREA GOVERNMENTS

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## 4. OPERATING BUDGETS AND WORK PLANS; STAFFING

### 4.1 Development and Approval

No later than January 1 of each year, the program managers of each program that is implemented, in whole or in part, for ABAG and of each program implemented for the LCPs will develop a schedule for the development of the Budget and Work Program for their respective program for the next fiscal year. Each schedule will take into account the processes and timelines for the applicable MTC, ABAG and LCP policy bodies to approve a Budget and Work Plan.

Each Budget and Work Program will include all of the following that is applicable to that program for that year:

- (a) description of programmatic activities for that fiscal year;
- (b) proposals for expansion of a current programmatic activity;
- (c) proposals for a new program (see section 4.2 regarding funding new programs);
- (d) description of programmatic activities that will be discontinued in that fiscal year;
- (e) a budget showing the revenue(s) needed to support the proposed Work Plan for that budget year;
- (f) identification of the source of the revenue(s) described in subsection (e) and
- (g) any contingency plan(s) needed to address programmatic uncertainties or budgetary shortfalls.

Each Budget and Work Plan that is approved by all the applicable MTC, ABAG and LCP policy bodies will be implemented in accordance with section 4.2. The Deputy Executive Director for Local Government Services will be responsible for securing the approval of the LCP policy bodies.

If a Budget and Work Plan is not approved by all the applicable MTC, ABAG and LCP policy bodies, the prior year's Budget and Work Plan will remain in effect until the new Budget and Work Plan is approved. The parties may at their discretion use the dispute resolution procedures contained in Section 13 to resolve any differences on proposed new Budget and Work Plans.

Following consultation with ABAG and the FAN Executive Committee, MTC will administer the current FAN portfolio in runout mode such that there will be no new debt issuance under the FAN name. During the FAN runout mode, MTC will evaluate the current FAN debt portfolio for refinancing opportunities and make recommendations to the FAN Executive Committee to authorize refinancing of debt issues that meet credit and economic conditions developed and approved by the FAN Executive Committee. In consultation with and oversight by MTC's CFO, FAN's current Financial Services Manager and Senior Consultant will establish new financial services joint powers authority as expeditiously as possible with the intent to be ready for market by September 1, 2017 or sooner. The ABAG Finance & Personnel committee will serve as the governing board, MTC Deputy Executive Director for Local Government as President, MTC Chief Financial Officer, or his designee, as Treasurer and MTC Program Manager as Secretary. ~~The consolidated staff working for MTC will, no later than \_\_\_\_\_, create a successor ABAG-affiliated conduit financing authority, which shall be a new legal entity with a new name and a new governing body (the ABAG Executive Board or its~~

~~designee), to continue to meet the conduit financing needs of the region and of ABAG's member jurisdictions.~~

#### 4.2 Revenues

(a) The ABAG Executive Board and the LCP governing bodies will collaborate and agree on annual work plans and budgets that identify existing revenues needed to support the current work plans and obligations set forth in Section 4.1. As part of this annual process, the ABAG Executive Board and the LCP governing bodies will make best efforts and adopt strategies to identify and secure any additional revenues that may be needed to support the anticipated work plans and obligations set forth in Section 4.1 for that fiscal year. With regard to any new programs proposed by ABAG, if that program is one that solely supports ABAG's services, programs and mission, ABAG will be responsible for securing the funding for that program. If a new program is one that is jointly proposed by ABAG and MTC, the two agencies will agree on how to jointly fund the program.

~~(a)(b) Throughout the term of this Agreement, MTC will provide continued financial support for ABAG's and MTC's statutory responsibilities, joint planning responsibilities and integrated work plan.~~

#### 4.3 MTC Staffing

The MTC employees identified as part of the Budget approval process (which shall contain an organization chart) will be responsible, commencing as of the Effective Date, for providing the services under this Agreement, both to ABAG and to the LCPs. Except as provided in section 6, MTC may remove, replace or add to the list of MTC employees below at any time as needed in the judgment of MTC.

### 5. **COMPENSATION AND METHOD OF PAYMENT**

#### 5.1 Compensation

For the first fiscal year in which services under this Agreement commence, ABAG will pay to MTC compensation equal to the amounts scheduled to be paid under pre-existing adopted work plans and budgets for ABAG in that fiscal year.

For all subsequent fiscal years, ABAG will compensate MTC based upon amounts specified in each of the approved Operating Budget and Work Plan for such fiscal year.

Compensation structures may include, subject to budget discussions between MTC and ABAG:

- (a) total or partial cost recovery by MTC, based upon a breakdown of personnel costs, direct costs, and indirect costs;
- (b) total funding by MTC of select entities or programs;
- (c) subsidy of select entities and programs by MTC;
- (d) subsidy of select entities and programs by ABAG; and/or
- (e) subsidy of programs by one or more LCP.

each other whole such that the final financial consequences to each party of the CalPERS determination shall reflect the financial assumptions made at the time the contract was executed.

## 6.2 Changes in Employment Status

During the first fiscal year after the Effective Date, prior to making any employment change (including but not limited to termination, reassignment, or promotion) with respect to any Transitioned Employee, MTC will provide the ABAG Executive Board with 30 days prior written notice of the intended change before any action is taken. No Transitioned Employee may be terminated, reassigned, or promoted during such period without prior written notice to the ABAG Executive Board and the affected LCP, if applicable.

## 6.3 Employee Transition Plan

MTC will follow the terms of the Employee Transition Plan set forth in Exhibit [B], which sets forth various one-time provisions applicable to Transitioned Employees.

## 6.4 Plan for Staff Consolidation

Transitioned Employees will transition to MTC by July 1, 2017.

## 6.5 LCP Staffing and Officers

ABAG agrees to make best efforts to work with the LCPs to formally modify any relevant agreements to allow staffing at the LCPs to be contracted to MTC. In those instances in which one or more former ABAG staff members serve in "dual capacities," sitting as officers of LCPs by virtue of their former positions within ABAG, all reasonable efforts will be made to formally modify relevant agreements or otherwise put legal arrangements in place such that MTC staff, will serve as officers of such LCPs.

## 6.6 SFEP Staff

The current existing staff, with the exception of the three staff performing permit work for the Regional Water Quality Control Board, will move the location of their employment from 1515 Clay Street, Suite 1400, Oakland, CA to 375 Beale Street, San Francisco, CA, at such time as the space at 375 Beale Street is ready for occupancy. MTC will pay for the costs of moving the SFEP staff to 375 Beale Street.

## 6.7 Pension and Medical Benefits

(a) ABAG will retain all liability for meeting its annual obligation for outstanding CalPERS pension obligations and retiree medical benefits, and will make meeting such obligations a budgetary priority.

(b) In the event of need, the first priority for use of excess revenues from ABAG's new financial services joint powers authority will be to meet the obligations referenced in subsection (a).

~~(a)~~(c) In the highly unlikely event that the ABAG dues and revenues described in subsection (b) are insufficient and ABAG is unable to meet the obligations referenced in subsection (a), MTC will use its best efforts and direct the CFO to assist ABAG in raising revenues required to make these payments.

## **7. RESPONSIBILITIES OF MTC PERSONNEL**

### **7.1 Personnel**

Attached as Exhibit [C] is the MTC organization chart identifying all of the employees of the consolidated staff as of the Effective Date. This organization chart will be updated annually or as changes are made so that the ABAG policy bodies and LCP governing boards have up to date information on people staffing their programs.

## **8. GOVERNANCE STUDY**

MTC and ABAG agree to conduct a governance study on the ABAG LCPs and to present the findings to the ABAG Executive Board and appropriate LCP Boards for consideration. The objective of the governance study will be to increase accountability to the ABAG Executive Board and efficiency in the operation of the LCPs.

## **9. RELEASE OF CLAIMS**

ABAG, the LCPs, and MTC mutually agree to indemnify and hold each other harmless for any breach of this Agreement, and agree to release any and all claims between or amongst each other arising out of this agreement.

## **10. INSURANCE AND RISK ALLOCATION**

### **10.1 Engagement of Consultant(s)**

MTC and ABAG will jointly engage a professional risk manager and an insurance broker (who may be the same party) to develop a proposed allocation of legal risk (claims from third parties) between and among MTC, ABAG and the LCPs during the term of the Agreement. The process for selecting and engaging such party or parties will be as follows:

- (a) Not more than 60 days after the Effective Date, MTC will initiate, by procurement procedures employed by MTC in the ordinary course of business, a request for proposals/qualifications (the "Solicitation") for the services described above and to assist and advise MTC in procuring and implementing the policies and practices set forth in subsection 10.2.
- (b) MTC staff will review responses to the Solicitation and evaluate them based on factors such as responsiveness, qualifications/reputation, and cost, and will select one or more preferred providers.
- (c) MTC staff will present the choice of the selected provider(s) to the MTC Administration Committee and the ABAG Finance and Personnel Committee for approval.

### **10.2 Insurance Policies**