



METROPOLITAN
TRANSPORTATION
COMMISSION

Bay Area Metro Center
375 Beale Street
San Francisco, CA 94105
TEL 415.778.6700
WEB www.mtc.ca.gov

Memorandum

TO: Commission

DATE: April 24, 2017

FR: Executive Director

RE: Approval of the Contract for Services for the MTC / ABAG Staff Consolidation and Memorandum of Understanding Related to Future Governance

Since the joint referral on March 24th of the contract for services (CS) and governance MOU by the MTC Planning Committee and ABAG Administrative Committee, two important meetings have occurred. On April 18th, the MTC Executive Committee met and recommended two changes to the contract and two changes to the MOU, as described in the attached memo from Chair Jake Mackenzie to ABAG President and Commissioner Julie Pierce (Attachment A). On April 20, the ABAG Executive Board met and approved the CS as to form, subject to several proposed amendments and two conditions. As to the amendments, there were a set of minor changes suggested by former ABAG Executive Director Revan Tranter and one change from former ABAG Executive Director Henry Gardner. MTC staff recommends that the Commission agree to those amendments, as shown on Attachment B. The ABAG Executive Board also agreed to the two CS revisions recommended by the MTC Executive Committee, so staff in turn recommends that the Commission approve those changes as well.

The two proposed conditions are another matter entirely (see Attachment C for detailed language of the approving motion). The first condition concerns a March 28th letter both agencies received from CalPERS which indicated it would not make a final determination of the employment status of the transitioned employees until after the staff consolidation occurs and CalPERS has conducted an audit of the new organizational arrangement (see Attachment D). To deal with that uncertainty, the joint committee referral version of the CS includes language under which each agency would hold the other harmless in case CalPERS makes a different determination than our common expectation that all the transitioning employees would be treated as MTC employees from July 1st forward for pension purposes. We have drafted some additional contract language in Attachment E, which would extend this “hold harmless” protection to the transitioning employees themselves. Taken together, we think the existing contract provision in Section 6.1 and this proposed revision are sufficient to satisfy ABAG’s first condition.

The second condition stipulates that MTC must voluntarily recognize SEIU 1021 as the labor representative of the transitioning employees and bargain with them regarding employment with MTC. This condition raises a series of legal and policy issues, and involves litigation exposure

that is appropriate to consider in closed session. With the concurrence of Chair Mackenzie, we have added such a session to your April 26th Commission agenda.

With respect to the governance MOU, the Executive Board approved the original joint committee referral language regarding section 6, Selection of Future Executive Director, relying on an Attorney General's case cited by ABAG's legal counsel as guidance that the interview/selection committee – comprised of both MTC and ABAG board members – could meet in closed session pursuant to the Brown Act for purposes of interviewing the future candidate(s) for MTC Executive Director. In the event that there is legal uncertainty regarding this conclusion, the Executive Board approved as an alternative that the interview/selection committee shall be an exclusively MTC Committee and the composition should include all crossover MTC board members who also sit on the ABAG Executive Board.

The final two enclosures (Attachments F and G) are copies of the joint committee referral versions of the CS and MOU, with changes requested by MTC highlighted in blue and changes requested by ABAG in green, and areas of agreement in yellow. For the MOU Section 6, the MTC Executive Committee recommendation is shown in blue and the ABAG alternatives are shown in green. The Commission needs to consider the underlying documents, the changes requested to date by each party, and any further changes the Commission wishes to propose, prior to taking final action on the ABAG/MTC staff consolidation. Given the number and significance of the changes still being proposed by both agencies after nearly two years of negotiation, it is unlikely that final action can occur in April as scheduled. Just to state the obvious, we are running seriously low on time to complete this consolidation by July 1st.

We look forward to your meeting on April 26th and making as much progress as possible.



Steve Heminger

Attachment:

- Attachment A: Memo from Chair Mackenzie to President Pierce, dated April 19, 2017
- Attachment B: ABAG Executive Board edits to the CS as proposed by Revan Tranter and Henry Gardner
- Attachment C: ABAG Detailed Language on the Approving Motion
- Attachment D: Letter from CalPERS dated March 28, 2017
- Attachment E: Proposed Revision to CS to Address the CalPERS condition approved by the ABAG Executive Board
- Attachment F: Contract for Services – as referred by the Joint MTC Planning and ABAG Administrative Committee with revisions proposed by MTC in blue, ABAG in green, and by both in yellow
- Attachment G: Memorandum of Understanding related to Future Governance – as referred by the Joint MTC Planning and ABAG Administrative Committee with revisions proposed by MTC in blue, ABAG in green, and by both in yellow



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375 Beale Street
San Francisco, CA 94105
TEL 415.778.6700
WEB www.mtc.ca.gov

Memorandum

TO: Julie Pierce, ABAG President

DATE: April 19, 2017

FR: Jake Mackenzie, MTC Chair

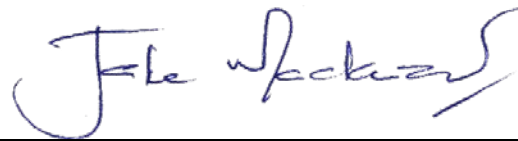
RE: Report of the MTC Executive Committee and Recommended Revisions to the Contract for Services and Memorandum of Understanding

As discussed at the Joint MTC Planning/ABAG Administrative Committee meeting on March 24th, I called a meeting of the MTC Executive Committee to discuss several policy issues related to the Contract for Services (CS) for the MTC/ABAG Staff Consolidation and Memorandum of Understanding (MOU) related to future governance. The Executive Committee met on Tuesday, April 18th. The policy areas of focus included: 1) Selection of future Executive Director; 2) CalPERS pension obligations; 3) Timeline for creation of a successor ABAG-affiliated conduit financing authority; and 4) Service Employees International Union (SEIU) and Committee for Staff Representation (CSR) employee concerns. As you know from your attendance at the meetings, the Committee recommended four revisions to the CS and MOU. A summary along with some background on the proposed revisions is below, and the revisions are detailed in Attachment A:

1. Selection Process and Committee Composition of future Executive Director: The MTC Executive Committee is recommending to add more definition to the process and composition related to the selection of the future Executive Director, and to make some refinement in order to avoid potential future questions related to the Brown Act. Specifically, the new language calls for a sequential interview/review process by an MTC committee and by an ABAG Ad Hoc committee, that would be appointed at the discretion of the ABAG President, before final recommendation to and approval of the new Executive Director by MTC. The MTC interview/selection committee is to be comprised of MTC Commissioners who do not serve on ABAG, with an exception for dual capacity allowed for the MTC Chair and Vice Chair. The separate interview processes by an MTC Committee and the use of an ABAG Ad Hoc committee, should the ABAG President decide in his or her discretion to establish one, is in the spirit of the original language adopted by the Joint Committees; it's simply a refinement to avoid potential questions related to permissible closed sessions under the Brown Act for hiring and interview purposes.
2. CalPERS Pension Obligation: A revision is recommended to clarify that even if MTC is called on to assist ABAG to find new revenue to meet its pension obligations, those obligations fully remain ABAG's to meet.

3. Future Governance Considerations: A revision is recommended to clarify in the MOU that the discussion on governance changes is just that, with no obligation on either policy board to agree to governance changes.
4. Creation of a Successor ABAG-Affiliated Conduit Financing Authority: Based on more consideration by staff of the time needed to stand up a new finance authority and ABAG's interest in accelerating the process, a compromise date of October 31, 2017 is proposed as the deadline to create a successor financing authority.

I respectfully request that the ABAG Executive Board consider approving these revisions at its meeting on Thursday evening. I will attend the meeting and can provide additional information and answer questions if necessary. The Commission stands ready to act on the CS and MOU, including the revisions, at its meeting next week on April 26th.



Jake Mackenzie

Attachment:

- Attachment A: Executive Committee Proposed Revisions to the Contract for Services and Memorandum of Understanding related to Future Governance referred by the Joint MTC Planning and ABAG Administrative Committee

JM:AAB

J:\COMMITTEE\Commission\EXEC\April 2017\Post Meeting Material\Chair Memo_CS and MOU actions.04.19.17.docx

Attachment A – Executive Committee Proposed Revisions to the MTC/ABAG Staff Consolidation Contract for Services and Memorandum of Understanding Related to Future Governance

1. Replace Section 6 of the MOU with the following:

Selection of Future Executive Director

The Executive Director of MTC will continue to serve as the Executive Director of MTC under the Contract for Services between MTC and ABAG. The Executive Director of MTC will also serve as the initial Executive Director of the consolidated staff. If there is a vacancy in the position of the Executive Director prior to a merger of MTC and ABAG, the Chair of MTC will establish an Executive Director interview/selection committee comprised of MTC commissioners who do not serve on ABAG to interview and select a final candidate or candidates who will then be presented to an ABAG Ad Hoc review committee should the ABAG President decide in his or her discretion to establish one. The MTC Chair and ABAG President may, in their discretion, appoint themselves and the MTC Vice Chair and ABAG Vice President, respectively, to serve on the respective interview committees and none of the four aforementioned officers shall be deemed ineligible if serving in a dual capacity for each agency. If an ABAG Ad Hoc review committee is appointed, its recommendation will be communicated to the MTC interview/selection committee who will then make a recommendation to the full MTC Commission for the final decision.

2. Replace Section 6.7 of the Contract for Services, page 10, with:

Pension and Medical Benefits

(a) ABAG will retain sole financial responsibility 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 to fund the obligation referenced in subsection (a), 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).

(c) In the event that the ABAG dues and revenues described in subsection (b) are insufficient and ABAG is unable to meet the obligations referenced subsection (a), MTC will use its best efforts to assist ABAG in raising new revenues required to make these payments; however, in no event shall MTC be responsible for nor assume the obligation to make such payments required under subsection (a) above.

3. Add the sentence below, shown in underline and highlighted text to Section 4 of the MOU:

Deadline to Initiate Discussions on Governance

No later than July 1, 2019, ABAG and MTC will begin discussions on whether the two agencies should restructure their governing boards to better serve the region and to better utilize

the consolidated staff. These discussions may be conducted directly through the Executive Board of ABAG and the Commission of MTC, or their respective designated policymakers or designated policy bodies. Both parties retain the sole individual discretion to decide whether or not to merge the two governing boards.

4. Add the date shown in underline and highlighted text below to the Contract for Services, Section 4.1, page 7

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. The consolidated staff working for MTC will, no later than October 31, 2017, 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.

Hon. Julie Pierce, President
and Members of the Executive Board
Association of Bay Area Governments
Bay Area MetroCenter
375 Beale Street
San Francisco, CA 94105

Dear Julie:

Like you, and no doubt other Board members, over the past few months I have heard from a large number of ABAG retirees, worried and even anguished about their future pension (and in many cases medical) benefits following implementation of the proposed Contract for Services with MTC. I should add that I am an interested party myself, as far as pension, although not medical, benefits are concerned.

Changes by ABAG and MTC in the draft contract have been appreciated, but worries still remain. However, from my discussions as late as this morning, I believe the following fairly simple proposal would go a long way to assuaging these, and I therefore submit this to the Executive Board, in the hope it would be found acceptable by both the Board and the Commission.

REQUESTED CHANGES TO THE DRAFT MTC-ABAG CONTRACT FOR SERVICES

A. Add the following to section 1:

‘ABAG Retiree’ means a current CalPERS annuitant who has retired from ABAG and any person who retires from ABAG.

B. In the definition of ABAG Legacy Employees change the section reference from 5 to 6.

C. Add the word ‘Most’ to the beginning of section 6.1

D. Change section 6.7 to the following:

7. **ABAG RETIREES**

(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).

(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 new revenues required to make these payments.

E. Renumber the sections that follow the new section 7.

Thank you for your consideration, and I hope the requested changes will be supported by the Executive Board and ultimately the Commission.

Sincerely

Revan

Revan Tranter
Executive Director Emeritus

April 19, 2017

Julie Pierce, President
Members, Executive Board
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, California 94105

Dear President Pierce and Members of the Executive Board:

I submit for your consideration the following proposed change to the Contract for Services between Metropolitan Transportation Commission and Association of Bay Area Governments:

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 its highest budgetary priority permitted by law.

Respectfully,

/s/ Henry Gardner
Executive Director *Emeritus*
Association of Bay Area Governments

Cc: Brad Paul, Acting Executive Director
Kenneth Moy, Legal Counsel
Courtney Ruby, Director, Finance and Administrative Services

Motion to Approve the Contract for Services between ABAG and MTC as to Form
Contingent on Meeting Specified Condition(s)

Moved that

- the ABAG Executive Board approve as to form the Contract for Services between ABAG and MTC as presented to the Board at its April 20 meeting
- and amended as follows:
 - A. changes in the email from Revan Tranter;
 - B. changes in the letter dated April 19 from Henry Gardner;
 - C. changes to the Contract for Services in the memo dated April 19 from Jake Mackenzie
- Contingent on the following condition(s) being met:
 - 1. ABAG and MTC senior management agreeing on contract language that if CalPERS determines that one or more members of the consolidated staff are, for CalPERS purposes, ABAG employees, the parties will make each other whole for the financial consequences of the CalPERS determination and MTC will make each affected employee whole for the financial consequences of the CalPERS determination; and
 - 2. MTC voluntarily recognizes SEIU 1021 as the labor representative of the members of the Transitioned Employees currently represented by them and to bargain with SEIU 1021 regarding employment with MTC.
- This/These condition(s) will be deemed to have been met when the following occur:
 - a. As to the CalPERS condition, a written communication to the ABAG Executive Board and the Commission of MTC signed by the chief executive officers of ABAG and MTC stating that agreement has been reached and transmitting the agreed upon contract language.
 - b. As to the labor condition, a written communication to the ABAG President signed by the chief executive officer of MTC and the President of SEIU 1021 stating that the condition has been met.



California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
TTY: (877) 249-7442
(916) 795-3675 phone • (916) 795-3659 fax
www.calpers.ca.gov

Attachment D

March 28, 2017

VIA E-MAIL and U.S. MAIL

Adrienne D. Weil
General Counsel
Metropolitan Transportation Commission (MTC)
375 Beale Street, Suite 800
San Francisco, CA 94105

Bradford Paul
Acting Executive Director
Association of Bay Area Governments (ABAG)
375 Beale Street Suite 700
San Francisco, CA 94105

Subject: MTC/ABAG CONTRACT FOR SERVICES

Dear Ms. Weil and Mr. Paul,

We are following up on our meeting with you on Monday, March 20, 2017. MTC and ABAG requested this meeting to discuss concerns about the transfer from ABAG to MTC of individuals ABAG currently employs and reports to CalPERS ("Legacy Employees"). Our meeting followed two previous meetings between MTC, ABAG and CalPERS staff with respect to these issues.

As we discussed at the March 20 meeting, and as MTC and ABAG have previously acknowledged, CalPERS applies the common-law employment standard to assess the employment status of members in the System. If the Legacy Employees are truly MTC employees, then application of the common-law standard will validate that. However, that assessment is fact-based, and CalPERS can only make it after it has audited an agency. In that regard, we note that the contract you asked us to review does not definitively answer this question. Accordingly, to the extent MTC and ABAG are seeking a declaration or some other form of approval of the proposed employment relationship of the Legacy Employees, CalPERS unfortunately cannot provide one.

Additionally, we want to correct any misunderstanding MTC and ABAG may have about ABAG becoming an inactive agency. To the extent that ABAG has no employees, as determined by the common-law employment test, it may be deemed inactive. However, because CalPERS cannot complete a common-law employment assessment of the proposed employment relationship absent a formal audit, it cannot conclude whether ABAG is inactive. Any representation to the contrary is incorrect.

That said, CalPERS appreciates MTC's and ABAG's recognition of the common-law employment standard followed by CalPERS, and both your organizations' desire to seek guidance from CalPERS on this issue.

As you know, at MTC's and ABAG's request, CalPERS staff has been engaged with your organizations' staff to provide guidance about how CalPERS evaluates whether an individual is the common-law employee of a CalPERS reporting entity. Our understanding is that those conversations are ongoing and that CalPERS staff has been waiting on additional information (e.g., the Legacy Employees' duty statements) from MTC. Staff has also reviewed the additional documents that Ms. Weil provided to me after our recent meeting.

In summary, CalPERS staff continue to have concerns about the common-law employee status of the Legacy Employees. Moreover, as part of this review, staff has identified potential reporting issues with the Local Collaboration Program (LCP) entities and ABAG. We request that ABAG provide the formation documents for the LCP entities to the following:

Attention: Arnita Paige, Chief
Pension Contract Management Services and Prefunding Programs
CalPERS
Financial Office
P.O. Box 942715
Sacramento, California 94229-2715

Thank you for your attention to these issues.

Sincerely,



Lisa Marie Hammond
Associate General Counsel

cc: Steve Heminger, Executive Director, MTC
Alix Bockelman, Deputy Executive Director, MTC
Marcie Frost, Chief Executive Officer, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Marlene Timberlake D'Adamo, Interim Chief Financial Officer, CalPERS

Attachment E – Proposed Language to Address ABAG Executive Board Condition Related to CalPERS

Add the following language to the end of Section 6.1 of the Contract for Services:

If in accordance with such CalPERs determination any Transferred Employees would end up receiving retirement benefits less than what they would receive as MTC employees, effective as of July 1, 2017, MTC will in accordance with the make whole obligations referenced in the first sentence hereof, provide funds to ABAG for distribution to such employees in the manner in which ABAG determines appropriate (provided however that such method of distribution shall provide the most economical solution to the agencies as determined by the outside expert referenced in the last sentence), such that the Transferred Employees are in an equivalent economic position as if they were MTC employees, effective July 1, 2017. Upon ABAG's receipt of such funds from MTC, the Transferred Employees shall have sole recourse to ABAG, and ABAG will indemnify and hold MTC harmless from any claims of such employees. The determination of any amounts due under this provision from one party to another shall be made by a nationally recognized actuarial entity, selected by mutual agreement of MTC and ABAG.

Attachment F

Draft April 24, 2017

CONTRACT FOR SERVICES

between

METROPOLITAN TRANSPORTATION COMMISSION

and

ASSOCIATION OF BAY AREA GOVERNMENTS

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CONTRACT FOR SERVICES

THIS CONTRACT FOR SERVICES (this "Agreement") is made and entered into as of the ____ day of Month, 20____, by and between the Metropolitan Transportation Commission (herein called "MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 and the Association of Bay Area Governments, (herein called "ABAG"), a Council of Governments established by agreement among its members pursuant to the Joint Exercise of Powers Act, California Government Code Sections 6500, *et seq.*

RECITALS

MTC is the federally designated Metropolitan Planning Organization ("MPO"), pursuant to Section 134(d) of Title 23 of the United States Code (USC) for the nine-county San Francisco Bay Area region (the "Bay Area" or "region").

ABAG was created in 1961 and serves as the Council of Governments for the 101 cities/towns and nine counties that make up the region with powers and responsibilities granted to it under the laws of the State of California.

In November 2015 MTC and ABAG agreed to jointly retain Management Partners to conduct a merger study and to propose a merger implementation plan.

At the June 2016 meeting of the ABAG Executive Board, it adopted Resolution 07-16 stating its support for merger options 4 and 7 and their respective implementation action plans as presented by Management Partners, with the ABAG Executive Board acknowledging moving forward with merger option 7.

On May 25, 2016 MTC adopted Resolution No. 4245 approving an implementation plan dated May 17, 2016 for merger option 7.

ABAG and MTC have concluded that this Agreement is the preferred means for ABAG and MTC to jointly pursue their respective missions and to carry out their respective responsibilities for the benefit of the San Francisco Bay region.

TERMS AND CONDITIONS

1. DEFINITIONS

ABAG is a joint powers agency that serves as the region's Council of Governments with the statutory responsibilities and powers granted by the California Legislature including, but not limited to, (a) responsibility for preparation of portions of the region's sustainable communities strategy and (b) authority to adopt the regional housing need allocation (RHNA) plan. The ABAG Executive Board and/or its standing committees and Local Collaboration Program governing boards are referenced from time to time in this Agreement in order to represent the interests of ABAG.

ABAG Legacy Employees means the individuals identified in Section **[56]** of this Agreement, each of whom, as of the Effective Date, is currently an employee of ABAG and is expected, in accordance with the Employee Transition Plan, to accept an offer of employment at MTC.

ABAG Retiree means a current CalPERS annuitant who has retired from ABAG and any person who retires from ABAG.

Effective Date means the effective date of this Agreement as set forth above.

Employee Transition Plan means the plan for transitioning ABAG Legacy Employees to employment at MTC as described in Exhibit [B] to this Agreement.

Enterprise Board means the governing board of a LCP.

Local Collaboration Program (LCP) means, individually or collectively as the context may require, each of the following entities created by ABAG in collaboration with local governments to implement a regional program:

Bay Area Regional Energy Network (BayREN);

San Francisco Estuary Partnership (SFEP);

San Francisco Bay Trail (BayTrail) and Water Trail (Water Trail);

ABAG Finance Authority for Nonprofit Corporations (FAN);

ABAG Finance Authority (ABAG FA);

ABAG PLAN Corporation (PLAN);

ABAG Publicly Owned Energy Resources (POWER);

Shared Agency Risk Pool (SHARP); and

San Francisco Bay Restoration Authority (SFBRA).

MTC is a regional transportation planning agency established pursuant to California Government Code § 66500 and is the federally designated Metropolitan Planning Organization ("MPO"), pursuant to Section 134(d) of Title 23 of the United States Code (USC) for the nine-county San Francisco Bay Area region.

MTC ICAP Rate means the indirect cost allocation plan, as approved by the appropriate MTC oversight agency.

Operating Budget and Work Plan means each annual operating budget and work plan for ABAG prepared and submitted by MTC in accordance with Section [4] of this Agreement and approved by the ABAG Executive Board and, to the extent applicable, each LCP governing body. Each operating budget and work plan will describe, in detail, the scope of work to be performed by MTC and the compensation to be paid to MTC for services rendered.

Transitioned Employee means each ABAG Legacy Employee who, after cessation of his or her employment at ABAG, voluntarily accepts an offer of employment at MTC and becomes an employee of MTC.

2. PRESERVATION OF RESPONSIBILITIES AND MISSIONS OF ABAG AND THE LCPs

The parties agree to use their best efforts to preserve, serve and secure the statutory powers and responsibilities of ABAG and the mission of ABAG as the region's Council of Governments following the Effective Date, and similarly to preserve, serve and secure the respective goals and missions of the LCPs. The activities and responsibilities described in this section should be approached in a manner that acknowledges that cities and counties are important partners in regional planning and that regional land use planning must be coordinated with local land use planning in order to succeed in building high quality neighborhoods.

A list of ABAG's statutory responsibilities is attached as Exhibit [A] and may be revised to reflect changes to those responsibilities and powers made by the California Legislature without formal amendment of this contract. To ensure that the services provided under this Agreement serve the goals and missions of ABAG and the LCPs, the parties agree as follows:

2.1 The Executive Director of MTC will perform the following duties and functions with respect to ABAG and the LCPs:

- (a) attend all regular meetings of the ABAG Executive Board and key committees (Administrative Committee, Finance and Personnel Committee, Legislation and Government Operations Committee, Regional Planning Committee) unless excused in advance by the President of such board or chair of the committee, or the attendance of another MTC senior manager is mutually agreed upon;
- (b) attend meetings of the LCP governing boards at which Operating Budgets and Work Plans are adopted by and for the LCPs; and
- (c) ensure that the approved Operating Budgets and Work Plans for ABAG and for each LCP will be implemented as approved, or as modified by ABAG or the LCP, as applicable;
- (d) attend the ABAG General Assembly(ies).

2.2 The Executive Director, the Deputy Executive Director for Local Government Services, the Deputy Executive Director of Policy, and other members of the MTC senior executive team will perform the following duties and functions on behalf of ABAG and the LCPs with the help of other appropriate MTC staff as needed:

(a) keep local elected officials, government officials and stakeholders informed on key issues of concern to the Council of Governments including land use, housing, economic development, social equity, resilience, transportation, open space, energy efficiency, RHNA, Plan Bay Area, and ABAG's Local Collaboration Programs in part, by:

- (i) meeting regularly with City Managers and Planning Directors at the county level;
- (ii) meeting with elected officials at regular countywide meetings of mayors and city council members;
- (iii) meeting with ABAG delegates at the county level on a regular basis; and
- (iv) conducting a robust stakeholder engagement process.

(b) serve as the primary links between ABAG's Executive Board, Committees and Local Collaboration Programs (LCP) and the MTC executive team and staff regarding issues such as Plan Bay Area, RHNA, housing, land use and LCP programs.

(c) work with appropriate MTC staff to help coordinate the work of MTC staff and ABAG Executive Board related to creating the Annual Budget & Work Plan for ABAG and its Local Collaboration Programs.

2.3 The members of ABAG and LCP's and the members of the policy bodies of ABAG and of the LCPs will continue to have access to, and ability to interact with, the MTC staff who provide services to them, that is commensurate with their respective roles as policymakers and staff.

2.4 ABAG shall provide written reports to the Commission regarding the quality and manner in which ABAG services, programs and work products are delivered, observations on the potential reasons for any deficiencies and suggestions for improvements. The Commission will respond to such reports within 60 calendar days and take them into account when reviewing MTC's satisfactory execution of its duties under the contract.

3. SERVICES

3.1 Standard of Professional Care

In the performance of services under this Agreement, MTC will exercise professional care, skill, efficiency, and judgment commensurate with that of consultants with expertise in providing such services.

3.2 Operating Budgets and Work Plans

Except as otherwise identified in this Agreement or the applicable Operating Budget and Work Plan, MTC will assume responsibility for and perform all services and functions necessary to perform ABAG's annual Work Plan. MTC and ABAG will develop, present, seek approval for, and implement Operating Budgets and Work Plans as provided in Section [4].

3.3 Financial Services

All ABAG finance and accounting functions, including the treasury function, will be assigned to MTC to be completed within the period from the execution date to a year thereafter, in such fashion to close out the transition of all legacy systems in an orderly manner for MTC finance.

ABAG and MTC will develop a transition plan for all ABAG financial systems, including but not limited to: (1) treasury; (2) general ledger, including accounts payable and receivable; (3) budget; and (4) payroll. The transition will occur and MTC will be responsible for all financial systems on or about July 1, 2017.

MTC rules for administration, personnel, payroll, employee relations, purchasing, contracting and other business operations shall apply to the services provided here under, to the extent to which they are compatible with ABAG policies. Notwithstanding the foregoing, ABAG contracts exceeding \$50,000 or such other amount dictated by the ABAG Executive Board, shall be approved by the ABAG Executive Board.

MTC will provide necessary financial reports prior to each ABAG Finance and Personnel Committee meeting, provided, however that such reports shall not be required more often than on a monthly basis.

3.4 Legal Services

The MTC Legal Department will provide general legal support services to ABAG and the LCPs.

- (a) Potential Legal Conflicts of Interest. If ABAG, a LCP, or MTC determines in good faith that an actual or potential conflict of interest would exist if the MTC Legal Department were to provide legal services on a specific matter, then, unless the actual or potential conflict of interest is waived by the affected entities, then the affected entity whose matter gave rise to the actual or potential conflict of interest will obtain separate legal counsel. MTC shall not withhold consent or resources to hire outside counsel for ABAG in the event a legal conflict of interest; provided that ABAG independently obtains such separate outside counsel.
- (b) Obtaining Outside Specialized Legal Services. ABAG or a LCP may request that the MTC Legal Department retain outside legal counsel to provide specialized legal services. The MTC Legal Department shall promptly respond to any such request in writing by either (i) agreeing to engage outside legal counsel and commencing to work with ABAG or the LCP, as applicable, to retain such counsel on terms and conditions acceptable to MTC, the MTC Legal Department, and the requesting party or (ii) declining to engage outside legal counsel and providing a brief explanation of the reason(s) such request is being denied.
- (c) Nothing in this Agreement prevents or impairs the ability of ABAG or the LCP to directly retain outside legal counsel, at its own respective expense.

3.5 Progress Reports

MTC will provide to the ABAG Executive Board and to the governing bodies of the LCPs quarterly progress reports in form and substance reasonably acceptable to those bodies, detailing the services provided by MTC in the preceding fiscal quarter as well as major activities anticipated in the coming quarter.

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 ~~13-14~~ 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. The consolidated staff working for MTC will, no later than **October 31, 2017**, 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.

(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.

5.2 Overhead and Administrative Costs

The overhead and administrative rate applied to work performed by MTC staff will be the MTC ICAP Rate except for the San Francisco Estuary Partnership (SFEP) and as the parties may otherwise agree in the applicable Budget and Work Plan or under section 5.1.

5.3 Payment Procedure and Method

ABAG will compensate MTC promptly in accordance with the payment schedule set forth in each Operating Budget and Work Plan, without netting or set-off except as agreed to in writing, in advance, by MTC in its sole discretion.

Payment to MTC will be made by wire transfer.

6. EMPLOYMENT OF ABAG LEGACY PERSONNEL

ABAG Legacy Employees are expected to become employees of MTC in accordance with the Employee Transition Plan. Each Transitioned Employee's general duties and responsibilities will be equivalent to his or her prior duties and responsibilities as an ABAG employee. ABAG agrees to terminate all employees (including but not limited to ABAG Legacy Employees) to be employed by MTC immediately prior to MTC's offer of employment to such employees. ABAG and MTC executive and human resources personnel shall coordinate the timing of such termination and offer of employment so as to effectuate a seamless and sequential termination and offer of employment with the least amount of lag time between the two events.

ABAG represents and warrants that: (a) there are no current open disciplinary actions related to employees proposed to transition to MTC and (b) the information regarding employee benefits, including its CalPERS account, retiree medical benefits, and sick account accruals provided by ABAG and inserted in the Transition Plan is complete and accurate.

Exhibit B1 identifies ABAG Legacy Employees.

6.1 Pension Obligations and Other Employee Benefits

Most ABAG Legacy Employees are currently represented by the Service Employees' International Union (SEIU), Local 1021, and are part of the California Public Employees' Retirement System (CalPERS). ABAG and MTC will cooperate and coordinate their discussions with SEIU Local 1021 and CalPERS to facilitate the transition of ABAG Legacy Employees from ABAG employment to MTC employment.

The parties hereby agree with respect to any and all Transitioned Employees that ABAG shall have no direct control over any such Transitioned Employees. Such Transitioned Employees shall be treated for all purposes as common law employees of MTC and shall have the same benefits and be subject to the same employment policies as existing MTC employees, provided however that certain accommodations shall be made on a case by case basis with regard to accrued sick time and vacation time as individual Transitioned Employee cases warrant.

ABAG agrees that it will not at any time during the term of this Agreement take any action to terminate its existing contractual relationship with CalPERS and will take all steps necessary to maintain its existing contractual relationship with CalPERS, including but not limited to making annual payments to CalPERS as required by under such contractual arrangements.

In the event CalPERS should make a determination contrary to the intent of this Agreement in respect to the common law status of the Transferred Employees, MTC and ABAG agree to make 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 this Agreement 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 ABAG Retirees

- (a) ABAG will retain **all liability sole financial responsibility** for meeting its annual obligation for outstanding CalPERS pension obligations and retiree medical benefits, and will make meeting such obligations **a its highest** budgetary priority **permitted by law**.
- (b) In the event of need **to fund the obligation referenced in (a)**, 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).
- (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 new revenues required to make these payments; **however in no event shall MTC be responsible for nor assume the obligation to make such payments under subsection (a) above.**

7.8. RESPONSIBILITIES OF MTC PERSONNEL

7.8.1 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.

8.9. 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.

9.10. 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.

10.11. INSURANCE AND RISK ALLOCATION

10.11.1 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 **10.11.2**.
- (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.

10.11.2 Insurance Policies

Upon retention of the consultant retained pursuant to subsection **10.11.1**, MTC will work with the consultant to undertake the following:

- (a) ABAG, the LCPs, and MTC will be insured under one blanket comprehensive general liability policy, professional errors and omissions policy (if applicable) and crime and fidelity policy. ABAG, the LCPs, and MTC will be insured under separate public officials and directors and officers errors and omissions policy
- (b) The allocation of the costs of deductibles under the policy described in the immediately preceding paragraph will be determined on a case by case bases under criteria and processes to be agreed upon by the parties after the Effective Date;

- (c) MTC will be insured under a separate employment practices policy; and
- (d) The costs of any uninsured claims made against either of the parties will be allocated on a case by case basis under criteria and processes to be agreed upon by the parties after the Effective Date.

~~10.3~~11.3 Business and Programmatic Risks

The parties agree that existing business and programmatic risks will remain with the entity responsible for the relevant business or program.

~~11.12.~~ NOTICES

All notices or other communications to either party by the other will be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:	Attention: Alix Bockelman Metropolitan Transportation Commission 375 Beale Street, Suite 800 San Francisco, CA 94105 Email: ABockelman@mtc.ca.gov
To ABAG:	Attention: ABAG President ABAG Vice President Chair, ABAG Finance Committee ABAG Administrative Committee members address: home address for each person Email: email address for each person cc: MTC Deputy Dir. for Local Gov't Services

~~12.13.~~ DURATION OF AGREEMENT

This agreement and the services hereunder will continue unless terminated in accordance with the terms herein.

~~13.14.~~ DISPUTE RESOLUTION

- (a) ABAG and MTC shall use good faith efforts to resolve all disputes informally. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within 30 calendar days of the request, the MTC Administration Committee shall provide a written determination as to the dispute, including the basis for its decision.

Upon the ABAG Administrative Committee's written acceptance of the MTC Administration Committee's determination, the Agreement may be modified and the determination implemented.

If the MTC Administration Committee's determination is not accepted by the ABAG Administrative Committee, the matter shall promptly be referred to the joint MTC board and the ABAG Executive Board for consideration.

If the joint MTC board and ABAG Executive Board cannot agree, they shall retain a facilitator to assist them in reaching a joint resolution.

- (b) For disputes described in subsection (c), if the joint MTC board and ABAG Executive Board cannot agree, said dispute shall be referred to binding arbitration using a JAMS binding arbitration panel of three (3) individuals with Governmental/Public Agency expertise selected in accordance with JAMS Rule 15 and using JAMS' Expedited Procedures without right of appeal.
- (c) Binding arbitration, as described in subsection (b), may only be used for disputes that meet the following criteria:
 - (i) limited to the interpretation of this Agreement and
 - (ii) do not arise out of, or have potential impacts on, the exercise of policy prerogatives, statutory powers or responsibilities, of either or both ABAG and/or MTC.

14.15. TERMINATION

1415.1 Termination for Cause

If (i) MTC does not deliver the work products specified in this Agreement in accordance with the mutually agreed upon delivery schedule or fails to perform in the manner called for in the Agreement, as set forth in Section 3 of this Agreement, or (ii) if MTC or ABAG fail to comply with any other material provision of the Agreement, then (A) in the first instance under (i) ABAG may terminate this Agreement for default and (B) in the second instance under (ii) MTC may respectively terminate for ABAG's failure or ABAG may respectively terminate for MTC's failure.

Termination shall be effected by serving a thirty (30) day advance written notice of termination on the affected party, setting forth in detail the manner in which the affected party is in default. If the affected party does not cure the breach or describe to the complaining party's satisfaction a plan for curing the breach within the thirty (30) day period, commencing on the date of receipt of the notice ("Cure Period"), the complaining party may terminate the Agreement for default, subject to the procedures set forth in Section ~~1314~~, which shall first require dispute resolution as set forth in Section ~~1314~~(a), and if unsuccessful, arbitration as set forth in Section ~~1314~~(b). The final decision in arbitration shall determine whether and when termination shall occur. In the case of (i), if MTC is working diligently to cure the alleged failure of performance, the parties will extend the Cure Period by mutual agreement. The Cure Period may be extended a maximum of six (6) thirty day periods.

If MTC's failure to perform resulted from unforeseeable causes beyond the control of MTC, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of MTC, ABAG, after setting up a new delivery or performance schedule, shall allow MTC to continue work.

14.2 Notice of Termination

Notice will be given by Certified Mail or Personal Service to the address specified in Section ~~1412~~.

14.3 Payment for Services Rendered Following Notice of Termination

MTC will be compensated for all work performed up to and including the date of termination of this Agreement, notwithstanding the delivery of any notice under this Section ~~14~~15, provided that MTC will not be compensated for any work that is under dispute and identified in the notice provided under section ~~14~~15.1.

~~15-16.~~ CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement will be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

~~16-17.~~ PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition will be deemed stricken and the remaining terms and conditions will remain valid and in full force and effect.

~~17-18.~~ BENEFIT OF AGREEMENT

The Agreement will bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

~~18-19.~~ ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument executed by both ABAG and MTC. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

ASSOCIATION OF BAY AREA
GOVERNMENTS

Jake Mackenzie, Chair

Julie Pierce, President

EXHIBIT A: ABAG STATUTORY RESPONSIBILITIES

EXHIBIT B: EMPLOYEE TRANSITION PLAN

Yellow highlights added detail to MTC MOU language to address ABAG staff transition.

Employment Offer Specifics for MTC/ABAG Staff Consolidation	
	<p><u>Position Design and Organizational Placement</u></p> <p>Exhibit B1 details the positions transitioning to MTC including the ABAG Legacy Employee being offered the position, position title, section, classification, and grade level.</p>
	<p><u>Employment Offers</u></p> <ul style="list-style-type: none"> • The specific salary being offered <ul style="list-style-type: none"> ○ Salaries will be at least equivalent to ABAG salaries plus a minimum 7% increase to address any per payroll net differences due to MTC benefit cost-share costs • Accrued but unused ABAG sick leave benefit hours which will be kept as a personal sick leave benefit bank with MTC. This personal sick leave balance is not eligible for donation to MTC's catastrophic leave bank. • Full time or Part time status <ul style="list-style-type: none"> ○ Annual salary equivalents determined by annual hours worked prorated appropriately for less than Full time employment • 9/80 alternate work schedule confirmation • ABAG service tenure
	<p><u>Other Special Considerations</u></p> <ul style="list-style-type: none"> • No probationary period • Waive background checks • Waive submittal of resume or application • ABAG service tenure will be considered in addition to MTC tenure for purposes of calculating vacation accrual rate, service recognition events, and any layoff/reinstatement actions (as needed per EDMM 295).
	<p><u>Performance Evaluation Program</u></p> <p>To provide continuous performance evaluations and salary merit increases acknowledging tenure at ABAG, ABAG and MTC will do the following:</p> <ul style="list-style-type: none"> • ABAG will ensure all employees are caught up on performance reviews and their salaries are at the correct level before transitioning to MTC. • MTC will include all Transitioned Employees in the annual performance evaluation cycle for 2017. The first performance year being evaluated is September 1, 2016 through August 31, 2017. • Transitioned Employees will have a mid-cycle performance evaluation in March of 2018 to confirm the performance rating for the 2017 performance evaluation cycle with the merit increase level effective on July 1, 2018 for individuals not at the top of their salary range.

Employment Offer Specifics for MTC/ABAG Staff Consolidation	
Benefit Program Customization for MTC/ABAG Staff Consolidation	
	Provide MTC vacation accrual based on ABAG service tenure. Exhibit B2 is MTC's vacation leave accrual table.
	<p>Three additional paid Personal Leave days will be available from July 1 through December 31, 2017. Along with the regular two Personal Leave days granted per standard MTC policy to individuals hired between May and August, Transitioned Employees will receive five paid Personal Leave days at the point of hire. These first five Personal Leave days must be used by December 31, 2017 or be forfeited, with no exceptions.</p> <p>In addition, Transitioned Employees may use vacation time benefits immediately upon accrual and may take additional time upaid as needed within the first year up to two weeks or 80 hours total.</p> <p>Requests for other additional time off subject to supervisor approval.</p>
	Recognize and keep on the books actual sick leave accrual from ABAG. There would be two accounts, ABAG sick accrual and the new accrual once an MTC employee. The MTC accrual would be subject to the payout of up to 240 hours and the ABAG accrual would not. ABAG sick accrual would not count toward CalPERS service credit, once an MTC employee.
	<p>Confirm that CalPERS pension Classic Plan eligible employees go into MTC's classic plan and New Plan eligible employees go into MTC's new plan.</p> <ul style="list-style-type: none"> Cannot make any custom arrangements with plan enrollment as is set by employer contract with CalPERS and regulated by CA Public Employees' Retirement Law

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Fiscal Years 2014-2015, 2015-2016, 2016-2017 and 2017-2018	
<u>SALARY TABLES</u>	Salary administration is regulated per compensation policy and the MTC Employee Handbook.
Salary Adjustments	<p>Effective July 1, 2014, salary tables shall be adjusted by 2.6%.</p> <p>Each following July 1 during this MOU period, salary tables shall be adjusted as follows:</p> <p>July 1, 2015 – 2.6% July 1, 2016 – 2.6% July 1, 2017 – 2.6%</p>
Merit Program	Pay step adjustments within range subject to policy guidelines.
<u>PAID LEAVE BENEFITS</u>	Use of all paid leave benefits is regulated per leave policy and the MTC Employee Handbook unless otherwise stated in this document.

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Holidays	Eleven (11) days per year for full time employees. No minimum service required for eligibility.
Funeral Leave	Up to three 3 days (24 hours), on the basis of need, in the case of the death of a defined family member or member of employee's household. No minimum service required for eligibility. This benefit has no cash value and is not payable upon employment separation.
Personal Leave Days	<p>Up to 3 personal leave days (24 hours) are granted at the beginning of each calendar year. The number of personal leave days granted to new employees is prorated as follows:</p> <p style="text-align: center;">January through April – 3 days May through August – 2 days September through November – 1 day December – 0 days</p> <p>In the event that Personal Leave Days are accrued but unused at the end of a calendar year, the employee will receive an amount to start the new calendar year at a maximum of three days. Personal Leave Days are not payable upon employment separation.</p> <p>Transitioned Employees will receive three additional Personal Leave Days at hire on July 1, 2017. These additional days will be available for use through December 31, 2017 only.</p>

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)

<p>Vacation Leave Benefits</p>	<p><u>Accrual of Vacation Leave Benefits</u></p> <ul style="list-style-type: none"> ○ One day (8 hours) per month worked starting with the first day of employment. Prorated for new hires based on first working day of employment within the month. ○ Addition of one more day (8 more hours) each additional year worked up to a maximum of 13 additional days (104 hours) for a total annual benefit of 25 days (200 hours) a year is reached. ○ Transitioned Employees will start accruing based on their service tenure with ABAG (example, an eight year ABAG employee starts accruing at MTC's eight year rate). ○ Accrued to a cap of 62.5 days (500 hours). Once the cap (500 hours) is reached, all vacation accrual stops until such time that the vacation balance falls below the cap (500 hours). If the vacation accrual is larger than the difference between the vacation balance and the 500 hour cap, individuals will receive only a fraction of their bi-weekly vacation accrual for that pay period bringing their vacation balance to 500 hours. ○ Employees working an average of 40 hours over a two-week pay period, but less than 72 hours over a two-week pay period will receive prorated benefits. ○ All vacation leave benefits are accrued and available for use with each bi-weekly pay period
	<p><u>Annual Vacation Cash Out Option</u></p> <p>Once a twelve month period, employees may cash-out accrued but unused vacation leave over 320 hours up to cap of 500 hours. Payment will be made at the employee's current hourly rate and is considered taxable earnings. Payment is subject to any and all applicable deductions.</p>
	<p><u>Payment Upon Separation</u></p> <p>Accrued but unused vacation time off benefits up to the maximum accrual of 62.50 days or 500 hours are payable upon employment separation at the hourly rate earned by the employee at the time of employment separation. Payment will be in one lump sum and is subject to any and all applicable deductions.</p> <p><u>Use of Benefit</u></p> <p>Transitioned employees may use accrued vacation time off benefits per policy immediately upon accrual and may request additional unpaid time off for vacations above accrued benefit levels up to two-weeks or 80 hours of vacation total within the first year of employment.</p>

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Sick Leave Benefits	<p><u>Accrual of Sick Time Off Benefits</u></p> <ul style="list-style-type: none"> ○ One day (8 hours) per month worked starting with the first day of employment. Prorated for new hires based on first working day of employment within the month. ○ Employees working an average of 40 hours over a two-week pay period, but less than 72 hours over a two-week pay period will receive prorated benefits. ○ Sick time off benefit is accrued without a cap. <p><u>Payment Upon Separation</u></p> <p>Accrued but unused sick time off benefits up to a maximum of 30 days or 240 hours are payable upon employment separation at the hourly rate paid the employee at the time of employment separation. Payment will be in one lump sum and is subject to any and all applicable deductions.</p> <p><u>Personal Sick Leave Bank</u></p> <p>Transitioned employees will have a personal sick leave benefit bank totalling their accrued but unused sick leave hours upon separation from ABAG employment. This bank is available for use until exhausted. This bank is not eligible for payout upon employment separation from MTC or for donation to MTC's catastrophic leave bank.</p> <p><u>Use of Benefit</u></p> <p>Employees may use accrued sick leave benefits per policy as soon as they are earned.</p>
<u>INTRODUCTION PERIOD</u>	The Introduction period is regulated per applicable policy and the MTC Employee Handbook.
	The initial six months of employment is considered to be an introduction period during which time a new employee's work and conduct are observed and evaluated, orientation and training provided as necessary, and issues with performance addressed directly and promptly in an effort to ensure the employee's success.
<u>INSURANCE</u>	Scope, limitations, and annual insurance premium costs are set forth in actual insurance company policies and provided each year during open enrollment.
Group Dental Insurance	Agency pays total premium for employee's coverage. The cost to Employees for coverage for one dependent is \$6.30 per month, and \$19.13 per month for two or more dependents. The Agency contributes the remainder of the premium. MTC will deduct employee dependent premium payments from earned wages pre-tax as allowable by law.

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Group Dental Insurance Cash-in-Lieu	Employees have the option of receiving the equivalent dollar amount of the Employee Only premium in cash upon signing a waiver of coverage and providing proof of being covered under a comparable dental plan. The amount is subject to federal and state tax withholding. Dental cash-in-lieu through December 31, 2017 is \$72.63.
Group Medical Insurance	<p>Employees agree to contribute towards medical premiums by paying five percent (5%) of the premium for each coverage line. The employer will cover ninety-five (95%) percent of premium for each coverage line.</p> <p>Total cost per month to the employee is dependent on the coverage line they select.</p> <p>Employee contributions will be capped as follows:</p> <p>\$75.00 for Employee Only \$125.00 for Employee Plus One \$175.00 for Employee Plus Family</p> <p>MTC will deduct employee medical insurance premium payments from earned wages pre-tax as allowable by law.</p>
Group Medical Insurance Cash-in-Lieu	Employees have the option of receiving cash-in-lieu of enrolling in the health insurance plan upon the signing of a waiver of coverage and providing proof of being covered under a comparable medical plan. The amount of cash-in-lieu will be equal to the second most costly Employee Only premium total minus the Employee contribution amount for that premium. Cash-in-lieu payments are subject to federal and state tax withholding. Medical cash-in-lieu through December 31, 2017 is \$973.61.
Vision Care Insurance	Agency pays total premium for Employee Only coverage. Employees may enroll dependents at their sole cost for \$7.51 for one dependent and \$26.70 for two or more per month. MTC will deduct dependent premium payments from earned wages pre-tax as allowable by law.
Domestic Partner Coverage	MTC provides group medical insurance, group dental insurance, and group vision coverage for an eligible domestic partner and dependents subject to CalPERS regulations regarding domestic partner coverage. The maximum amount of the Agency contributions shall be the same as that specified under "Group Dental Insurance" and "Group Medical Insurance" provisions referenced above.

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Life and Related Insurance	Agency pays premiums for Employee life insurance policy; life insurance benefit is equal to one times annual salary or a minimum of \$55,000, whichever is greater. Agency pays additional premium for employee for Accidental Death and Dismemberment policy equal to the group term life insurance coverage. Agency pays premium for qualified dependents (as defined in current policy) for \$2,000 life coverage per dependent.
Group Voluntary Life and Related Insurance	In addition, Employee may elect to purchase, at his/her expense, supplemental Group Voluntary Life Insurance.
Short-Term and Long-Term Disability	<p>Agency pays monthly premium for short-term disability coverage for qualifying employee medical disabilities to cover loss of wages. There is a 14-day waiting period with an additional 11 weeks of paid benefits (total 12 week benefit program). Coverage level is 66 2/3% of salary up to a maximum of \$2,500 a week. Benefits paid are taxable.</p> <p>Agency pays monthly premium for long-term disability coverage for qualifying employee medical disabilities to cover loss of wages. There is a 90-day waiting period (designed to pick up at the end of the 12-weeks of short-term disability coverage). Coverage level is 67% of monthly salary up to a maximum of \$15,000 per month. Benefits paid are taxable.</p>
Travel Insurance	Agency pays annual premium. Each employee is covered with a policy of \$100,000 for loss of life while traveling on MTC business.
<u>RETIREMENT</u>	
1 st Tier Retirement Formula (Classic Plan)	<p>The retirement benefit formula is calculated, pursuant to contract with PERS, at 2.5% at age 55.</p> <p>The Agency and employee agree to equally share any annual employer contribution rate change with employees assuming 50% of the annual employer rate change up to an employee total contribution rate capped at 8%.</p>
	<p>Effective, June 30, 2014, the Agency total contribution rate is 22.395% and the shared contributions are as follows:</p> <ul style="list-style-type: none"> (a) Employee pays 5.210% of salary (b) Agency pays 17.185% of salary

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
	<p>Effective July 1, 2014, the Agency total contribution rate will be 25.185% and the shared contributions will be:</p> <ul style="list-style-type: none"> (a) Employee pays 5.602% (b) Agency pays 19.583% <p>July 1, 2015, July 1, 2016, and July 1, 2017, the shared contribution rates will change based on the change in the Employer contribution rate shown in the Annual PERS Actuarial Valuation Report for periods ending June 2013, June 2014, and June 2015, and per any additional CalPERS contribution rate changes announced at the time of the report or separately due to valuation methodology changes.</p> <p>As of July 1, 2016 and through June 30, 2017, the employee contribution rate for the Classic plan is 6.38% of salary.</p>
Other Contracted Benefits (Classic Plan)	In accordance with Agency's PERS contract amendment effective August 1, 2000, Agency has contracted for the following optional provisions:
	3% Maximum Cost-of-Living Allowance; Section 21573 – Third Level 1959 Survivor Benefits; Section 21583 – Second Election 1959 Survivor Benefits; Section 21548 – Pre-retirement Optional Settlement 2 Death Benefit; and Section 20903 – Two years Additional Service Credit.
2 nd Tier Retirement Formula (New Plan)	<p>The retirement benefit formula is calculated, pursuant to contract with PERS, at 2.0% at 62.</p> <p>As of June 30, 2014, the Agency total contribution rate is 22.395% and the shared contributions are as follows:</p> <ul style="list-style-type: none"> (a) Employee pays 6.50% of salary (b) Agency pays 15.895% of salary <p>Effective July 1, 2014, the Agency total contribution rate will be 25.185% and the shared contributions will be:</p> <ul style="list-style-type: none"> (c) Employee pays 6.50% of salary (d) Agency pays 18.685% of salary <p>Effective July 1 of each year during this MOU period, the employee rate will be 50% of the plan "Normal Costs" per pension regulation. CalPERS will provide documentation of each fiscal year's plan Normal Costs directly to the employer in the annual valuation report each October prior to the effective July1 date.</p> <p>As of July 1, 2016 and through June 30, 2017, the employee contribution rate for the PEPR plan is 6.50% of salary.</p>

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Other Contracted Benefits (New Plan)	Plan provisions are determined by pension reform and California PERL. However, this New Plan also includes the same employer selected plan provisions as the Agency's Classic Plan:
	3% Maximum Cost-of-Living Allowance; Section 21573 – Third Level 1959 Survivor Benefits; Section 21583 – Second Election 1959 Survivor Benefits; Section 21548 – Pre-retirement Optional Settlement 2 Death Benefit; and Section 20903 – Two years Additional Service Credit.
Retiree Medical	Retiree and eligible dependents are entitled to the same medical benefits provided to regular MTC employees and at the same co-pay amounts (and per CalPERS' PEMCHA Equal Method Plan). If eligible, a retired MTC employee must apply for Medicare. His/her PERS health coverage is then provided as a supplement.
Retiree Dental and Vision	MTC shall provide retiree group insurance plans for dental and vision coverage. The cost of premiums will be the sole responsibility of the retiree. Eligibility for this program will follow CalPERS retiree medical eligibility rules and requirements.
<u>TRANSIT PARKING PROGRAM</u>	MTC shall provide a Transit/Parking Program providing commuting benefits as follows. Employees may elect to participate in only one option at a time.
	<p><u>Public Transit Option</u></p> <p>MTC provides a subsidy in accordance with IRS Fringe Benefit regulation for employees for legitimate and applicable transit ticket purchases. Purchases must be made through authorized MTC provided third-party transit administrator(s) only and must be for a monthly amount needed and used by each employee each month, per IRS regulation.</p>
	<p>Effective July 1, 2014, MTC's monthly subsidy will increase to up to \$214 per month.</p> <p>MTC will provide this subsidy tax-free per IRS fringe benefit allowances. As of January 2014, the allowable tax free level for fare purchase is \$130, and for eligible parking is \$250. As of January 2016, the allowable tax free level for fare purchase and parking is \$255 monthly. Any subsidy above the IRS limits is taxable income.</p> <p>Six months after relocation to MTC's new San Francisco office, MTC reviewed the transit subsidy level to determine if it was sufficient to serve the majority of employee transit costs. Based on this review and in consultation with employees, the transit subsidy level was increased to \$255 monthly on December 21, 2016.</p>

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)

	<p><u>Employer Provided Parking Option</u></p> <p>While MTC is still located at 101 8th Street, employees may select to contribute \$18.50 per month pre-tax for parking in the MTC leased employee parking lot in lieu of receiving the monthly transit subsidy. This option is based on availability of parking spaces in the lot.</p> <p>After moving the office to San Francisco, this option will change as follows:</p> <ul style="list-style-type: none"> (a) MTC will maintain rental of the Caltrans owned parking lot; (b) Parking spaces in this lot will be available to eligible employees to park at this lot and purchase transit to commute to San Francisco. (c) The cost of monthly parking in this lot will equal the cost of monthly parking at the BART Lake Merritt station as of July 1, 2014 (estimated to be \$84.00 per month) and will remain at this level for the period of the MOU.
	<p><u>Carpool Option</u></p> <p>While MTC is still located at 101 8th Street, employees in a verified carpool with two or more persons, at least one passenger working at MTC, will receive one free parking space in the MTC leased employee parking lot in lieu of the monthly transit/parking subsidy. This option is based on availability of parking spaces in the lot.</p> <p>After moving the office to San Francisco, parking in this lot will be administered as explained above, however, expanding the carpool rules for eligible passengers to include someone who works at MTC, ABAG, or the Air District. Carpool participants will be using transit to get to San Francisco.</p>
	<p><u>Bicycle Commuter Option</u></p> <p>For any employee regularly using a bicycle for a substantial portion of the travel between the employee's residence and place of employment for qualifying bicycle commuting months as described in IRS Publication 15-B, \$20 per month tax-free subsidy paid by MTC.</p>
	<p><u>Cash-in-Lieu Option</u></p> <p>Employees may elect to receive \$20.00 per month cash-in-lieu if not selecting another Transit/Parking Program. Cash-in-lieu payments are subject to federal and state tax withholding.</p>
<u>OTHER ELECTIVE DEDUCTIONS</u>	
Dependent Care Assistant Plan (DCAP)	<p>MTC's Dependent Care Assistance Plan (DCAP) is a totally employee-funded program, except for the costs incurred by Agency to administer the program. Employees may elect pre-tax payroll deductions up to the limits set by the Internal Revenue Service for the reimbursement of eligible childcare and dependent care expenses, in accordance with IRS regulations. See actual plan for details and limitations.</p>

Summary of Benefits: MTC Full-Time Regular Represented and Confidential Employee Positions (Except as otherwise noted and excluding executive employees)	
Health Care Flexible Spending Account	MTC's Health Care Flexible Spending Account is a totally employee-funded program, except for the costs incurred by the agency to administer the program. Employees may elect pre-tax payroll deductions up to a limit equivalent to the Federal Health Care Flexible Spending Account for the reimbursement of eligible healthcare costs that are not covered under the employee's health insurance. See actual plan for details and limitations.
Deferred Compensation Plan	Employee may elect to participate in the 457 Deferred compensation program(s) and make pre-tax contributions subject to IRS regulations and program limitations. The Agency will administer the pre-tax deductions and submittal of employee contributions.
<u>PROFESSIONAL DEVELOPMENT</u>	
Professional Development	Subject to approval by the Section Director and appropriations in the annual training and travel budget, employees may participate in Agency sponsored Professional Development, defined as any training, materials, testing, licensing, membership, conferences, classes, tuition, etc. that are determined to be appropriate to the employee's professional development.
Computer Purchase Program	MTC will assist in the purchase of a personal computer and peripheral equipment, up to a maximum of \$5,000 for regular fulltime employees who have completed their probation and are scheduled to work 72 hours or more per pay period. The total cost of each purchase shall be repaid by participating employee through bi-weekly payroll deduction, up to a maximum of a 2-yr period or 52 pay periods. See actual plan for details and limitations.
<u>MANDATORY PROVISIONS</u>	As required by statute.
Workers' Compensation	Standard
Unemployment Insurance	Standard

Exhibit B1: ABAG Legacy Employees

Gillian Adams
Halimah Anderson
Adrien Baudrimont
Duane Bay
Jennifer Berg
Charles "Ben" Botkin
Joshua Bradt
Dana Brechwald
JoAnna Bullock
Frederick Castro
Ada Chan
Waltraud "Wally" Charles
Kimberly Chase
Hsiu-Wen "Cindy" Chen
Rebecca Darr
Natasha Dunn
Christina Fong
Maureen Gaffney
Deborah Gaines
Michael Germeraad
Susan Glendening
Athena Honore
Lee Huo
Michael Hurtado
Celia Imperial
Ryan Jacoby
Johnny Jaramillo
Cynthia Kroll
Moti Kumar

Jerry Lahr
Christy Leffall
Shijia "Bobby" Lu
Darcie Luce
Gertruda Luermann
Michelle McDaniels William
Karen McDowell
Roslyn Morris-Singh
James Muller
Donghui "Lucy" Ng
Heidi Nutters
Aksel Olsen
Fred Parkinson
Bradford Paul
Leslie Perry
Courtney Ruby
Nai Finh "John" Saelee
Behrouz Samar
Ravindar Selvanayagam
Mark Shorett
Michael Smith
Jill Stallman
Caitlin Sweeney
Laura Thompson
Atti Williams
Hing Wong
Edna Yeh
Leah Zippert

EXHIBIT B2: MTC VACATION ACCRUAL CHART

TENURE	ANNUAL DAYS	ANNUAL HOURS	PER PAYROLL HOURS (26 PAYROLLS PER YEAR)
Year 1 *	13	104	4.00
Year 2	14	112	4.31
Year 3	15	120	4.62
Year 4	16	128	4.93
Year 5	17	136	5.24
Year 6	18	144	5.54
Year 7	19	152	5.85
Year 8	20	160	6.16
Year 9	21	168	6.47
Year 10	22	176	6.77
Year 11	23	184	7.08
Year 12	24	192	7.39
Year 13 +	25	200	7.70

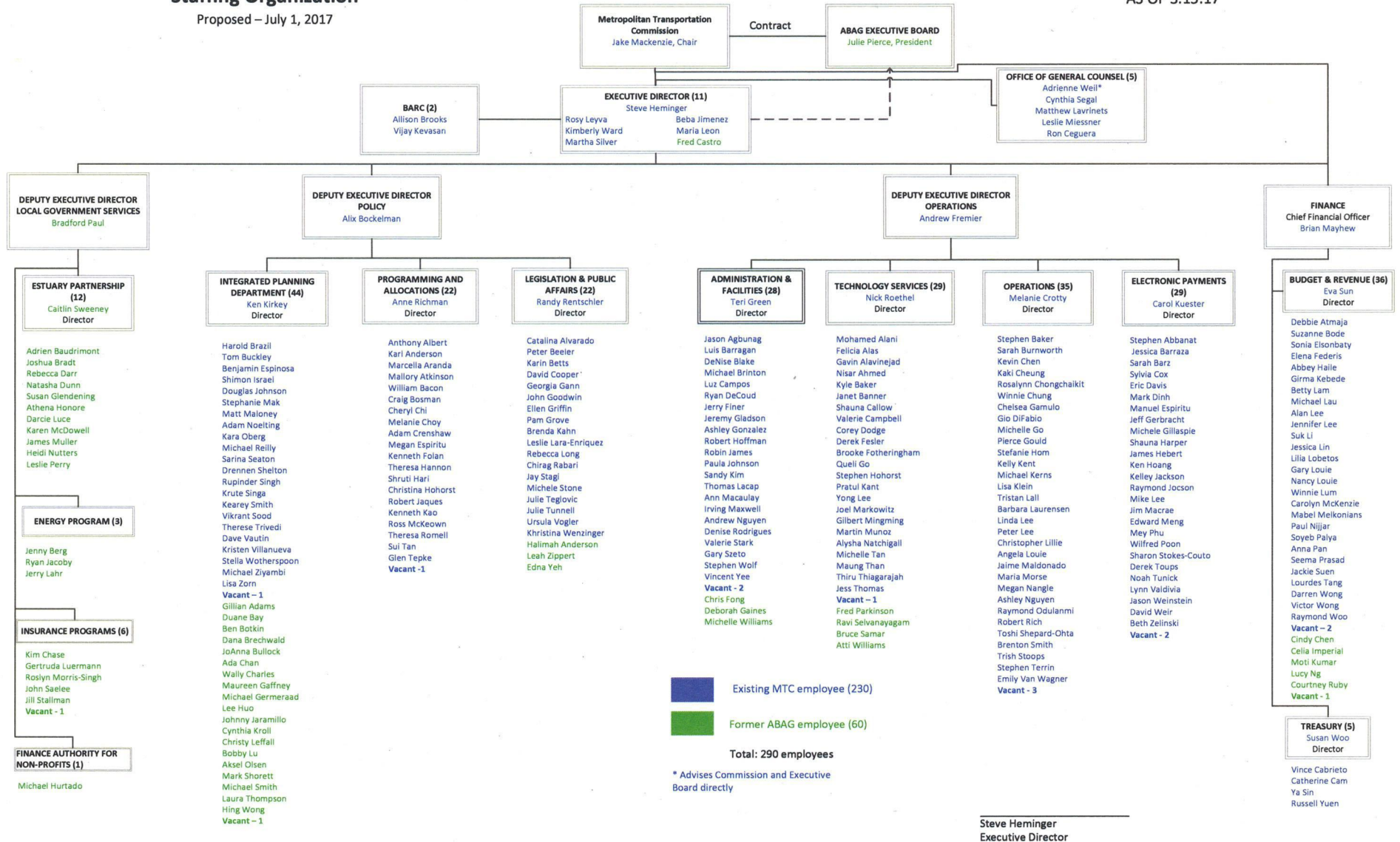
Metropolitan Transportation Commission

Staffing Organization

Proposed – July 1, 2017

EXHIBIT C: MTC ORGANIZATION CHART

AS OF 3.15.17



Attachment G

MEMORANDUM OF UNDERSTANDING

between

ASSOCIATION OF BAY AREA GOVERNMENTS

and

METROPOLITAN TRANSPORTATION COMMISSION

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of the ____ day of _____, 2017, by and between the Association of Bay Area Governments, (ABAG), a Council of Governments established by agreement among its members pursuant to the Joint Exercise of Powers Act, California Government Code §§ 6500, *et seq.* and the Metropolitan Transportation Commission (MTC), a regional transportation planning agency established pursuant to California Government Code § 66500.

RECITALS

- A. ABAG was created in 1961 and serves as the Council of Governments for the 101 cities/towns and nine counties that make up the region with powers and responsibilities granted to it under the laws of the State of California.
- B. MTC is the federally designated Metropolitan Planning Organization (“MPO”), pursuant to Section 134(d) of Title 23 of the United States Code (USC) for the nine-county San Francisco Bay Area region (the “Bay Area” or “region”).
- C. In November 2015 MTC and ABAG agreed to a jointly retain Management Partners to conduct a merger study and to propose a merger implementation plan.
- D. At the June 2016 meeting of the ABAG Executive Board, it adopted Resolution 07-16 stating its support for merger options 4 and 7 and their respective implementation action plans as presented by Management Partners with the ABAG Executive Board acknowledging moving forward with merger option 7.
- E. On May 25, 2016 MTC adopted Resolution No. 4245 approving an implementation plan dated May 17, 2016 for merger option 7.
- F. ABAG and MTC have concluded that this MOU and the concurrent Contract for Services is the preferred means for ABAG and MTC to jointly pursue their respective missions and to carry out their respective responsibilities for the benefit of the San Francisco Bay region.

STATEMENT OF MUTUAL UNDERSTANDING

1. **Option 7**

ABAG and MTC have agreed to pursue the implementation of Option 7 through a mutually agreed upon Contract for Services that governs how ABAG and MTC will share the use of a consolidated staff to carry out their respective missions and statutory powers and responsibilities and a mutually agreed upon memorandum of understanding to jointly pursue with MTC new governance options.

2. **This Memorandum of Understanding**

This MOU is the memorandum of understanding required by Option 7.

3. **Concurrent Contract for Services**

ABAG and MTC have agreed upon the Contract for Services required by Option 7 which is attached as _____

4. **Deadline to Initiate Discussions on Governance**

No later than July 1, 2019, ABAG and MTC will begin discussions on whether the two agencies should restructure their governing boards to better serve the region and to better utilize the consolidated staff. These discussions may be conducted directly through the Executive Board of ABAG and the Commission of MTC, or their respective designated policymakers or designated policy bodies. Both parties retain the sole individual discretion to decide whether or not to merge the two governing boards.

5. **Commencement of Information Gathering and Staff Support for Discussion on Governance**

No later than July 1, 2018, ABAG and MTC will direct and jointly fund the consolidated staff to begin collecting information on the governance structures of regional planning agencies with a focus on those with both land use and transportation planning powers and responsibilities, including transportation funding and investment.

6. **Selection of Future Executive Director MTC Executive Committee**

The Executive Director of MTC will continue to serve as the Executive Director of MTC under the Contract for Services between MTC and ABAG. The Executive Director of MTC will also serve as the initial Executive Director of the consolidated staff. If there is a vacancy in the position of the Executive Director prior to a merger of MTC and ABAG, the Chair of MTC will establish an Executive Director interview/selection committee comprised of MTC commissioners who do not serve on ABAG to interview and select a final candidate or candidates who will then be presented to an ABAG Ad Hoc review committee should the ABAG President decide in his or her discretion to establish one. The MTC Chair and ABAG President may, in their discretion, appoint themselves and the MTC Vice Chair and ABAG Vice President, respectively, to serve on the respective interview committees and none of the four aforementioned officers shall be deemed ineligible if serving in a dual capacity for each agency. If an ABAG Ad Hoc review committee is appointed, its recommendation will be communicated

to the MTC interview/selection committee who will then make a recommendation to the full MTC Commission for the final decision.

ABAG Executive Board/Joint MTC Planning and ABAG Administrative Committee

The Executive Director of MTC will serve as the Executive Director of the consolidated staff. Until the two governing boards are merged, the interview/selection committee for successor directors shall be comprised of equal numbers of MTC and ABAG board members to be appointed by the respective Chair of MTC and President of ABAG. The recommendation of that committee will be presented to the MTC for final decision.

ABAG Executive Committee Alternative

The Executive Director of MTC will serve as the Executive Director of the consolidated staff. Until the two governing boards are merged, the interview/selection committee for successor directors shall be comprised of MTC board members to be appointed by the Chair of MTC, provided that all members of MTC that also sit on the ABAG Executive Board will be appointed to the interview/selection committee. The recommendation of that committee will be presented to the MTC for final decision.

End of Document
Signature Page to Follow

MEMORANDUM OF UNDERSTANDING
BETWEEN
ASSOCIATION OF BAY AREA GOVERNMENTS
AND
METROPOLITAN TRANSPORTATION COMMISSION
*** * * * ***
AUTHORIZED SIGNATURES

IN WITNESS WHEREOF, ABAG and MTC have caused this MOU to be duly executed on its behalf.

Association of Bay Area Governments

Julie Pierce, President

Approved as to Form:

Kenneth K. Moy, Legal Counsel

Metropolitan Transportation Commission

Jake Mackenzie, Chair

Approved as to Form:

Adrienne Weil, General Counsel