



**FINANCE AND PERSONNEL COMMITTEE**

Thursday, July 16, 2015, 5:00 PM

Location:

Joseph P. Bort MetroCenter  
Association of Bay Area Governments  
101 8<sup>th</sup> Street, Conference Room B  
Oakland, California

*The ABAG Finance and Personnel Committee may take action on any item on this agenda.*

*Agenda and attachments available at [abag.ca.gov](http://abag.ca.gov)*

*For information, contact Charles Adams, Interim Finance Director, at (510) 464-7906.*

**1. CALL TO ORDER**

**2. PUBLIC COMMENT**

Information.

**3. APPROVAL OF MINUTES OF MAY 21, 2015**

ACTION.

*Minutes of May 21, 2015 meeting attached.*

**4. PRESENTATION AND REVIEW OF FINANCIAL REPORT FOR MAY 2015**

Information/ACTION.

*Financial Report for May 2015 is attached.*

**5. REPORT ON CONDITIONS IMPOSED BY MTC ON THE SIX-MONTH INTERAGENCY AGREEMENT**

Information.

**ABAG Finance and Personnel Committee**

July 16, 2015

2

*Staff report is attached.*

**6. REPORT ON PAYMENT OF MEMBERSHIP DUES FY 15-16**

Information.

*Staff report is attached.*

**7. ORAL REPORT ON STATUS OF LINE OF CREDIT RENEWAL**

Information.

**8. REPORT ON SCO RECOMMENDATIONS**

Information.

*Staff report is attached.*

**9. CLOSED SESSION**

**A. Public Employee Performance Evaluation**

Title: Executive Director

**10. ADJOURNMENT**

The next meeting of the Finance and Personnel Committee will be on Thursday, September 17, 2015.

Submitted:

Charles Adams, Interim Finance Director

Date: July 6, 2015

## **ABAG FINANCE AND PERSONNEL COMMITTEE**

### **Summary Minutes**

**May 21, 2015**

#### **Members Present**

Mayor Bill Harrison  
Supervisor Karen Mitchoff  
Supervisor David Cortese  
Supervisor Mark Luce  
Councilmember Julie Pierce

#### **Jurisdiction**

City of Fremont  
County of Contra Costa  
County of Santa Clara  
County of Napa  
City of Clayton

#### **Members Absent**

Councilmember Desley Brooks  
Supervisor Scott Haggerty  
Supervisor John Gioia  
Supervisor Dave Pine  
Supervisor David Rabbitt

City of Oakland  
County of Alameda  
County of Contra Costa  
County of San Mateo  
County of Sonoma

#### **Officers and Staff Present**

Ezra Rapport, Executive Director  
Bradford Paul, Asst. Exec. Director  
Kenneth Moy, Legal Counsel  
Charles Adams, Interim Finance  
Director  
Brian Kirking, HR and IT Director  
Susan Hsieh, Asst. Finance Director

#### **Guests**

Ken Bukowski, Videographer

1. The meeting was called to order by Mayor Harrison, Committee Chair, at 5:08 pm. There was no quorum for this meeting. Action items were forwarded to the Executive Board for approval and they were all approved on May 21, 2015.
2. There was no public comment.
3. Summary Minutes of the March 19, 2015 meeting were forwarded to the Executive Board for approval.

4. Mr. Rapport introduced the Interim Finance Director Charles Adams to the Committee. Mr. Rapport praised Mr. Adams for his long track record and financial and accounting expertise. Mr. Adams received a warm welcome from the Committee. The item was for information only.
5. Mr. Adams presented the March 2015 financial report and the financial outlook. The Committee inquired about the funding from MTC for fiscal year 2015-16 and Mr. Rapport reported the status. The March 2015 financial report was forwarded to the Executive Board for approval.
6. Mr. Rapport reported that membership dues for fiscal year 2014-15 have been fully paid. The Committee was pleased about current year's payment status. The Committee also discussed the payment trend in recent years. The item was for information only.
7. Mr. Rapport presented the proposed fiscal year 2015-16 BARC budget to the Committee. ABAG's in-kind contribution is \$44,300 and cash contribution is \$30,861. The budget was forwarded to the Executive Board for approval.
8. Mr. Adams provided the Committee an overview of ABAG's \$2M line of credit with the Bank of the West and sought approval to renew the line of credit to February 28, 2017. The Committee discussed about the renewal fees, interest rate, and second deed of trust used to secure the line of credit. The Committee directed staff to provide more information about the second deed of trust at the next meeting but proceed with the renewal upon approval by the Executive Board. The item was forwarded to the Executive Board for approval.
9. Mr. Rapport proposed to provide the Bay Area Council Economic Institute \$50,000 financial support for fiscal year 2015-16. Mr. Rapport and the Committee discussed the partnership with the Institute and how the collaborative efforts have enabled ABAG to engage the business communities/other partners successfully. The activities support ABAG's strategic plan/mission and benefit the Bay Area Region. The item was forwarded to the Executive Board for approval.
10. Mr. Adams reported the on status of the SCO review. His report included the purpose of the review, work performed by SCO auditors, the exit conference with the SCO team on May 13, 2015, and the time table for issuing the final report. The key recommendation will be developing a plan to strengthen the controls over

FAN operations. Mr. Adams also reported on the status of the MTC audit. MTC's auditors had not disclosed the findings, but the audit has slowed down and it is expected to complete soon. The item was for information only.

11. The Committee and staff discussed the interagency agreement with MTC for fiscal year 2015-16. The Committee directed staff to confirm the funding sources and budget amount. The item was for information only.

12. There was no closed session.

13. Meeting was adjourned at 6:50 pm.

Submitted: Susan Hsieh, Assistant Finance Director



**Date:** July 7, 2015

**To:** Finance and Personnel Committee

**From:** Charles Adams, Interim Finance Director

**Re:** ABAG's response to MTC's challenge of ABAG Billing of Selected Personnel as a Direct Charge as well as a Component of Indirect Overhead Costs

**Summary**

MTC drafted an amendment to the Interagency Agreement that requires ABAG to: “correct all cost for personnel that have been charged as direct and also included as part of the indirect pool...prepare a new schedule for the three-year period FY2012-13 through FY2014-15 that removes the direct charges and assigns these charges instead to the indirect cost pool only.” MTC has also withheld payment of \$135,192.81 on ten FY2014-15 invoices, for direct charges by the Executive Director and Deputy Executive Director.

MTC offered as authority and basis for their actions a 2008 letter from the Federal Highway Administration (FHWA) to the California Department of Transportation, which cites OMB Circular A-87, and an Agreed Upon Procedures Examination by PWC, MTC's independent auditors.

ABAG rejects the MTC assertion that it has violated federal regulations in billing the direct charges of its Executive Director, Deputy Executive Director and other staff for which a portion of their annual cost is included in the indirect cost pool. This memo and the supporting attachment document that:

- ABAG has followed the procedures prescribed by the Environmental Protection Agency (EPA), its federal Oversight Agency, in preparation of its Indirect Cost Allocation Plan.
- ABAG has followed the procedures prescribed by the EPA, its Oversight Agency, in billing as direct costs services directly and solely related to projects performed under contract with MTC.
- The EPA has cited the same Circular A-87 regulation as the FHWA, in confirming ABAG's compliance with federal regulations in preparation of its Indirect Cost Allocation Plan.
- There has been no overlap or double billing of costs to MTC or any entity to which ABAG has provided services.

- The recent examination by PWC, MTC’s independent auditors, did not report any improper charges or violations of federal regulations by ABAG.
- An independent review in 2011 by NBS Governmental Services Inc. (NBS) of ABAG’s method of computing its indirect cost overhead rate and application of the rate based on direct personnel cost, concluded that the methodology has been approved and audited under OMB Guidelines.

### **MTC Assertions and Charges**

Amendment No. 1 to Interagency Agreement.... Fiscal Year 2014-15, Attachment A, Paragraph 1 states: “... ABAG shall correct all costs for personnel that have been charged as direct and also included as part of the indirect pool; there shall be no overlap.”

In a memorandum to the ABAG Assistant Finance Director, MTC has questioned, and withheld payment of all direct charges by the ABAG Executive Director and Deputy Executive Director for the period July 2014 through April 2015. Regarding these charges, the schedule provided by MTC states: “Why charged to MTC as direct and not indirect?”

ABAG staff requested that MTC provide the authority for their assertion that charges for the Executive Director and Deputy Executive Director were only allowable as a component of the indirect cost pool. The MTC response was an October 30, 2008 letter from the Division Administrator, Federal Highway Administration, California Division, U.S. Department of Transportation. The attachment to this letter states in part:

*FHWA recognizes that many MPOs have taken on other duties, tasks, and responsibilities that go beyond what is considered directly chargeable or assignable to a Federal award. While such costs are allowable, any costs associated with “managing and operating Federal programs by the chief executive and staff” should be included in the MPOs indirect cost allocation plan and allocated to all of the MPOs activities and functions.*

MTC commissioned an Agreed Upon Procedures Examination by PWC, MTC’s independent auditors. The PWC report Paragraph 6.d.iv., states: “We obtained the list of personnel in the indirect cost pool and compared the list to the Payroll Cost Report to identify those who had also directly charged the in scope projects. Per A-87, “a cost may not be allocated to a federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.”

Attachment E of the PWC report list seven individuals identified in the Indirect Cost Pool who also directly charged the in scope projects. There is no finding in the PWC report of charges assigned as direct costs also being included in the Indirect Cost Pool.

## Response and Rebuttal

1. MTC has demanded that the ABAG Indirect Cost Plan be recomputed so that there be no “overlap” of charges. The implication in their demand is that it has been documented that there is overlap and duplication in the charges by ABAG to MTC. This is not the case and this is supported by the lack of any such assertion in the PWC report. PWC examined all of the direct personnel charges for the period July 1, 2012 to February 28, 2015, they examined application of the approved Indirect Overhead Rate to charges for this period, and they examined the computation of the approved Indirect Cost Rates for this period. PWC made no mention of overlapping or double charging by ABAG.
2. ABAG’s procedure in computing its Indirect Cost Rate is to list all personnel who by job description will perform management and operating tasks on projects and grants administered by ABAG. Each person’s annual hours are divided between hours performing indirect cost functions and direct hours. In effect, each employee has a specific number of hours that must be allocated. Some are able to charge part of that time as direct costs to a specific project and the balance of their time is charged to the Indirect Cost Pool. The PWC examination verified that computations and billings by ABAG conformed to this model, and that there was no overlapping or double charging of costs.
3. ABAG has provided MTC copies of the EPA approval letters for its Indirect Cost Plan for FY 2014-15 and prior years. The EPA is the Oversight Federal Agency for ABAG and ABAG is required to follow EPA guidelines and directions in preparation of its Indirect Cost Plan. At ABAG’s request, Jacqueline Smith (ABAG’s EPA Manager for Indirect Cost Plans) has provided us a memorandum on Executive Director Costs, dated June 25, 2015. See Attachment 1.

The memo states: “According to 2 CFR Part 225, Appendix B, Section 19(b) “the portion of salaries and expenses **directly** attributable to managing and operating Federal programs by the Chief executive and his staff is allowable”..... The Executive Director at ABAG works on multiple activities/cost objectives, and according to ABAG their time is readily assignable to these activities in accordance with the standards in subsection 8.h.(5). Therefore, the only Executive Director costs included in the indirect cost pool were those costs that were not readily assignable to an activity or program, and were allowable costs.”

The EPA memorandum references the same Federal regulation as was referenced in the FHWA October 30, 2008 letter to MTC (2 CFR 225, Appendix B, Section 19)b). The regulation is clear; the Executive Director and his staff’s time are chargeable as direct or indirect costs, and the only cost which may be included in the indirect cost pool are costs that benefit multiple projects.

4. In 2011, ABAG PLAN Corporation engaged NBS Consultants to perform an analysis of ABAG's internal cost allocation methodology. NBS reported the following:
  - a. The cost plan is developed in accordance with Federal standards for reimbursement of direct and indirect costs from grants as outlined in OMB Circular A-87.
  - b. The rate has been audited and approved by ABAG's cognizant State and Federal agencies as needed for reimbursement of overhead costs from grants.
  - c. OMB A-87 requires agencies to provide an accurate reflection of "after the fact" time distribution for each employee's direct and indirect job activities. ABAG, unlike many city and county organizations, meets this requirement through its existing time keeping practices.
  - d. ABAG's approach of applying a calculated indirect cost rate on top of salaries is a simplified method of cost allocation, and is also considered one industry standard approach.
  - e. NBS concludes that ABAG's existing cost allocation methodology meets its primary goal, has been approved and audited under OMB Guidelines, and also meets industry standard cost allocation practices (and even Best Practices).

### **Conclusion**

MTC has erred both in interpretation of the FHWA letter of October 30, 2008, and in their presumption that ABAG should be governed by an agency other than its designated Federal Oversight Agency, the Environmental Protection Agency (EPA).

MTC has failed to recognize that the PWC examination commissioned by MTC did not report any violations of federal regulations by ABAG in calculation of its Indirect Cost Rate or in the billing of direct costs, for employees for whom a portion of their annual salaries and benefits are included in the Indirect Cost Pool.

There have been no instances proven, or even alleged, of any misuse, loss or erroneous reporting of MTC funds paid to ABAG. Thus, we believe, MTC has no basis for limiting their funding commitment to ABAG to six months or for requiring the recomputation of earlier invoices submitted to MTC based on this issue.

Attachment: EPA Memorandum 6/25/2015



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ADMINISTRATION  
AND RESOURCES  
MANAGEMENT

# Memorandum

**To:** Susan Hsieh, CPA, CFIP  
**From:** Jacqueline Smith  
**Date:** 6/25/2015  
**Re:** Executive Director Costs

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This memo is in response to how the Executive Director costs are charged by the Association of Bay Area Governments, ABAG. According to 2 CFR Part 225, Appendix B, Section 19(b) “ the portion of salaries and expenses **directly** attributable to managing and operating Federal programs by the Chief executive and his staff is allowable”. This section does not state that these salaries and expenses should only be charged indirectly or directly. However, the guidance does define indirect costs as costs: “Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.” The Circular also makes clear that there is no universal rule for classifying costs as direct or indirect under every governmental accounting system. Instead the essential difference between indirect and direct costs is the degree of ease with which a cost can be readily assigned to a particular cost objective with a high degree of accuracy.

The Executive Director at ABAG works on multiple activities/cost objectives, and according to ABAG their time is readily assignable to these activities in accordance with the standards in subsection 8.h.(5). Therefore, the only Executive Director costs included in the indirect cost pool were those costs that were not readily assignable to an activity or

program, and were allowable costs. As a result, only the programs that benefitted from the indirect Executive Director costs were allocated a portion of these costs. If we included the Executive Director's direct activities in the indirect cost pool, then activities and programs that did not benefit from these costs would be allocated a portion of these costs.

The following paragraph discusses other duties and tasks that are not **directly** assignable or chargeable to a Federal award, but it also mentions any costs associated with "managing and operating Federal programs". I agree that the costs associated with managing and operating **multiple** Federal programs; therefore not directly chargeable to a specific award are allowable and should be included in the indirect cost allocation plan.

"FHW A recognizes that many MPOs have taken **on other** duties, tasks, and responsibilities that go **beyond** what is considered **directly chargeable or assignable to a Federal award**. While such costs are allowable, any costs associated with "managing and operating Federal programs by the chief executive and staff" should be included in the MPOs indirect cost allocation plan and allocated to all of the MPOs activities and functions.

**DATE:** July 8, 2015  
**TO:** Finance & Personnel Committee  
**FROM:** Charles Adams, Interim Finance Director  
**SUBJECT:** Payment of Membership Dues FY 15-16

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**Summary**

The membership dues invoices for fiscal year 2015-16 were mailed to members in May 2015 after approval at the General Assembly Business Meeting on May 14, 2015. Payments were due on July 1, 2015. Of the \$1.89 million budgeted membership dues, \$740 thousand (or 39%) were collected from May 26 through July 7, 2015. The attached worksheet presents the members and amounts collected.

Based on past trend, a significant portion of payment is usually received in the month of July. Staff will send out past due notices in early August. The friendly reminders will encourage members to pay in a timely manner. Staff will continue reporting to the Committee on the payment status of membership dues.

**Recommendation**

For information only.

Attachment

**ABAG FY 15-16 Membership Dues  
Payments from May 26 to July 7, 2015**

<b>Jurisdiction</b>	<b>Amount</b>
CITY OF ALBANY	\$ 4,221
CITY OF ANTIOCH	19,980
CITY OF BELVEDERE	1,115
CITY OF BENICIA	5,925
CITY OF BRENTWOOD	11,054
CITY OF BRISBANE	1,558
CITY OF CALISTOGA	1,709
CITY OF CLAYTON	2,842
CITY OF CLOVERDALE	2,357
CITY OF CONCORD	22,221
CITY OF CUPERTINO	11,989
CITY OF DIXON	4,322
CITY OF DUBLIN	10,824
CITY OF EMERYVILLE	2,708
CITY OF HALF MOON BAY	2,941
CITY OF HEALDSBURG	2,907
CITY OF LAFAYETTE	5,395
CITY OF LARKSPUR	3,013
CITY OF LIVERMORE	16,464
CITY OF MENLO PARK	6,957
CITY OF MILL VALLEY	3,422
CITY OF MILLBRAE	5,005
CITY OF MILPITAS	13,812
CITY OF NEWARK	9,035
CITY OF ORINDA	4,149
CITY OF PLEASANT HILL	7,142
CITY OF REDWOOD CITY	15,730
CITY OF RIO VISTA	2,223
CITY OF ROHNERT PARK	8,441
CITY OF SAN JOSE	102,082
CITY OF SAN PABLO	6,306
CITY OF SAN RAMON	15,101
CITY OF SAUSALITO	2,079
CITY OF SEBASTOPOL	2,129
CITY OF SONOMA	2,766
CITY OF ST. HELENA	1,845
CITY OF SUISUN CITY	6,132
CITY OF SUNNYVALE	24,978
CITY OF VALLEJO	21,459
CITY OF WALNUT CREEK	13,109
COUNTY OF ALAMEDA	152,580

<b>Jurisdiction</b>	<b>Amount</b>
COUNTY OF CONTRA COSTA	109,706
COUNTY OF SONOMA	57,109
TOWN OF COLMA	997
TOWN OF HILLSBOROUGH	2,854
TOWN OF MORAGA	3,818
TOWN OF ROSS	1,185
TOWN OF SAN ANSELMO	3,091
TOWN OF YOUNTVILLE	1,290
<b>Total collected 49 members</b>	<b>740,077</b>
<b>Uncollected 59 members</b>	<b>1,146,122</b>
<b>Total dues invoiced</b>	<b>\$ 1,886,199</b>