# JOINT POWERS AGREEMENT

# SFBRA/ABAG/SCC

# PROPOSED RECITALS AND TERMS
# July 29, 2016

## RECITALS

A. The San Francisco Bay Restoration Authority (SFBRA) is a regional entity established by the San Francisco Bay Restoration Authority Act, Government Code section 66700 et seq. that is charged with raising and allocating funds for the protection and enhancement of tidal wetlands and other wildlife habitat in and surrounding the San Francisco Bay and for related public access and flood protection and that successfully placed the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure ("Measure AA"), a regional special tax measure, on the June 2016 ballot to raise such funds.

B. The State Coastal Conservancy (SCC) is a state agency established pursuant to Division 21 of the Public Resources Code. Chapter 4.5 of Division 21 of the Public Resources Code authorizes the Conservancy to award grants in the nine-county San Francisco Bay Area to help achieve Division 21's goals for the San Francisco Bay Area Conservancy Program, which include the protection, restoration and enhancement of natural habitats and improved public access to and around San Francisco Bay.

C. The Association of Bay Area Governments (ABAG) is a joint powers authority of the cities and counties of the nine-county San Francisco Bay Area with the authority to perform regional and subregional planning and to coordinate with other governmental entities including federal, state and regional agencies via the San Francisco Estuary Partnership (SFEP), which implements programs and awards grants for protection and enhancement of San Francisco Bay.

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

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

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

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

F. The SFBRA desires to benefit from the expertise of ABAG, SFEP and SCC in planning and achieving restoration, enhancement and protection of San Francisco Bay. The SCC desires to have a role in the allocation of Measure AA revenues for purposes of furthering the goals for the San Francisco Bay Area Conservancy Program, as set forth in Chapter 4.5 of Division 21, which will help the California Natural Resources Agency achieve its broader statewide goals. ABAG desires to assist the SFBRA to ensure its successful implementation of the San Francisco Bay Restoration Authority Act and Measure AA. The parties also desire to maximize efficiency and reduce administrative redundancy in order to direct as much of the available funding as possible toward planning and implementation of projects for the protection, enhancement and restoration of San Francisco Bay and associated public access and flood protection.

## TERMS

### 1. Parties to the Agreement

- San Francisco Bay Restoration Authority
- Association of Bay Area Governments
- California State Coastal Conservancy

### 2. Purposes of the Agreement

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

### 3. Staffing Responsibilities for SFBRA Act Implementation

SCC and ABAG shall provide staff services to the SFBRA, as set forth below, for purposes of implementation of the San Francisco Bay Restoration Authority Act and Measure AA. In performing services for the SFBRA, SCC staff shall do so as state employees and shall represent themselves to the public as SCC employees. The SFBRA acknowledges that SCC staff members will bring their expertise and perspectives as state employees to performance of their duties under this agreement, and that SCC staff will not provide services beyond those necessary to implement the San Francisco Bay Restoration Authority Act.

- **Executive Officer:** SCC shall provide a staff member to perform Executive Officer services for the SFBRA; Executive Officer services shall include preparation of a work plan and budget; oversight of compliance with Measure AA requirements and other revenue restrictions; management of SFBRA public meetings; coordination of the SFBRA Advisory Committee and the Independent Citizens Oversight Committee; management of external communications; consultation with ABAG; direction of program staff; and other duties that may be delegated to the Executive Officer by the SFBRA.

- **Program Staff:** SCC and ABAG shall provide staff members to perform program services for the SFBRA under the direction of the Executive Officer. Program services shall include: development of procedures for grant evaluation and prioritization, review of grant applications, preparation of grants and contracts, oversight of projects and contracts, review of invoices, and related administrative functions. SCC and ABAG will decide jointly which program staff functions will be performed by ABAG.

- **Treasurer/Fiscal Agent:** ABAG shall provide a financial officer to act as treasurer to the SFBRA. The treasurer shall receive, safeguard, invest, and disburse funds; collect taxes from counties; perform fiscal audits; provide accounting services; prepare and submit internal and external financial reports; make recommendations regarding risk management and procure adequate insurance on behalf of SFBRA.

- **Legal:** SCC shall provide legal services to advise the SFBRA Governing Board, the Executive Officer, program staff, Clerk of the Board, and the treasurer on SFBRA matters. Attorney services shall include preparation of oral and written legal advice, review of staff recommendations, and retention and management of outside counsel to represent SFBRA in the event of litigation. ABAG will provide legal services in the event of a conflict of interest that is not waived by SFBRA and SCC.

- **Clerk of the Board:** SCC shall provide a staff member to serve as the meeting clerk for the SFBRA. The meeting clerk services shall include: maintenance of the official records of SFBRA, preparation of meeting notices and agendas, coordination with ABAG for

posting official notices on the SFBRA website, notifying Governing Board members of Fair Political Practices Commission filing requirements and maintaining FPPC filings, and providing clerical and logistical support to Governing Board members.

- **Information Technology:** ABAG shall maintain and manage the SFBRA website in accordance with written protocols and procedures. SCC shall maintain and manage electronic records related to the Executive Officer, program staff, legal services, Clerk of the Board and other public records.

**4. <u>Date Parties Assume Their Obligations</u>**

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

**5. <u>Effective Date/Duration</u>**

- JPA will become effective when signed by all parties and will remain in effect until January 1, 2029, unless extended by written agreement of the parties.
- SFBRA can terminate JPA upon 180 days written notice to SCC and ABAG.
- ABAG and SCC can withdraw from the JPA upon 180 days written notice; remaining parties may amend agreement to reallocate responsibilities, add other parties, or terminate.

**6. <u>Payment</u>**

- Staff services and other allowable costs incurred by the parties after July 1, 2016 are eligible for reimbursement by the SFBRA; staff services or other costs incurred by the parties before July 1, 2016 are the sole responsibility of the entity incurring the costs.
- SFBRA will reimburse ABAG and SCC for their costs in carrying out responsibilities under the JPA consistent with a budget approved by the SFBRA Governing Board. Costs include costs of contracts for goods and services, staff costs at fully burdened rates for each applicable job classification, and travel essential to carrying out responsibilities under this agreement. ABAG and SCC will promptly notify SFBRA's Governing Board if costs may exceed the budget. Such notice will include proposals for reducing costs and/or an estimate of the exceedances. Exceedances will be paid only if the budget is amended to include them.

**7. <u>Indemnification</u>**

SFBRA agrees to indemnify ABAG and SCC for tort liability arising out of performance of this agreement. SFBRA shall purchase appropriate insurance for this purpose. SCC and ABAG shall indemnify SFBRA prior to the time that SFBRA has funds to purchase the insurance.

**8. Audits and Accountability**

- ABAG will fulfill SFBRA's statutory obligation to provide for regular audits of the SFBRA's accounts and records, and shall maintain accounting records and shall report accounting transactions in accordance with generally accepted accounting principles adopted by the Government Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the State Controller. (Govt. Code 66705(a).)

- ABAG will fulfill SFBRA's statutory obligation to provide for annual financial reports and to make copies of the annual financial reports available to the public. (Govt. Code 66705(b).)

- SFBRA may order independent audits.

- SCC will perform its responsibilities in accordance with applicable laws, the SFBRA enabling law and guidelines created by SFBRA, and will make its SFBRA-related records available to ABAG for audit.

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

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

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

- SCC will provide ABAG quarterly projections of cash needs.

**10. Procedures**

SCC will draft grant and contracting processes and other procedures necessary for the efficient operation of the SFBRA Governing Board.

**11. Participation Requirements**

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

**12. <u>Amendment</u>**

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