



# CALL AND NOTICE

## **CALL AND NOTICE OF A SPECIAL MEETING OF THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF THE ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

As Chair of the Executive Committee of the Board of Directors of the ABAG Finance Authority for Nonprofit Corporations, I am calling a special meeting of the Executive Committee as follows:

### Special Meeting

Wednesday, November 8, 2017, 1:30 p.m. to 2:30 p.m.

### Location:

Bay Area Metro Center  
Bay Area Conference Room 6102  
375 Beale Street  
San Francisco, California

### Teleconference Locations:

County of Solano, County Government Center, 675 Texas Street, Suite 1900, Fairfield, California  
County of Sonoma, County Fiscal Building, 585 Fiscal Drive, Suite 100, Santa Rosa, California  
County of Santa Clara, County Government Center, 70 West Hedding Street, E. Wing, 2<sup>nd</sup> Floor, San Jose, California  
County of Contra Costa, 625 Court Street, Room 100/102, Martinez, California

### Executive Committee Members:

Charles Lomeli, Treasurer/Tax Assessor/County Clerk, County of Solano  
Jonathan Kadlec, Assistant County Auditor/Controller/Treasurer/Tax Collector, County of Sonoma  
Paul McDonough, County of Santa Clara  
Russell Watts, County Treasurer/Tax Collector, County of Contra Costa

*The ABAG FAN Executive Committee may act on any item on the special meeting agenda.*

*Agenda and attachments available at <https://abag.ca.gov/meetings/financeauthority.html>*

*For information, contact Fred Castro, Clerk of the Board, at (415) 820 7913.*

## **1. CALL TO ORDER / ROLL CALL / CONFIRM QUORUM**

**ABAG FAN Executive Committee**

November 8, 2017

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**2. PUBLIC COMMENT**

INFORMATION

**3. ADOPTION OF RESOLUTION AUTHORIZING THE JOINT POWERS AGREEMENT  
CREATING THE ADVANCING CALIFORNIA FINANCE AUTHORITY (ACFA)**

ACTION

**4. ADJOURNMENT**

The next meeting of the ABAG FAN Executive Committee will be announced.

Date Submitted: November 3, 2017

Date Posted: November 6, 2017

# ASSOCIATION OF BAY AREA GOVERNMENTS

Finance Authority for Nonprofit Corporations



ABAG

## AGENDA

### **EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF THE ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

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Paul McDonough, County of Santa Clara

Russell Watts, County Treasurer/Tax Collector, County of Contra Costa

*The ABAG FAN Executive Committee may act on any item on this agenda.*

*Agenda and attachments available at <https://abag.ca.gov/meetings/financeauthority.html>*

*For information, contact Fred Castro, Clerk of the Board, at (415) 820 7913.*

#### **1. CALL TO ORDER / ROLL CALL / CONFIRM QUORUM**

#### **2. PUBLIC COMMENT**

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**ABAG FAN Executive Committee**

November 8, 2017

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**3. ADOPTION OF RESOLUTION AUTHORIZING THE JOINT POWERS AGREEMENT  
CREATING THE ADVANCING CALIFORNIA FINANCE AUTHORITY (ACFA)**

ACTION

Brian Mayhew, MTC Chief Financial Officer, will give the staff report.

*Attachments: Memo Approval ACFA JPA; Resolution; Presentation; ACFA JPA; ACFA JPA  
(Redlined)*

**4. ADJOURNMENT**

The next meeting of the ABAG FAN Executive Committee will be announced.

Date Submitted: November 3, 2017

Date Posted: November 6, 2017



Date: November 3, 2017

To: ABAG FAN Executive Committee

From: Executive Director

Subject: **Adoption of Resolution Authorizing the Joint Powers Agreement Creating the Advancing California Finance Authority (ACFA)**

Attached for ABAG FAN Executive Committee review and approval is the resolution authorizing the Joint Powers Agreement creating the Advancing California Finance Authority (ACFA). ACFA is a Joint Powers Authority (JPA) between ABAG and the ABAG Finance Authority for Nonprofit Corporations (FAN).

### **Background**

The ABAG FAN Executive Committee had a staff presentation and held initial discussions about ACFA at the meeting on October 26, 2017. The discussions centered around general purposes, the new role as credit committee, and program funding under the new JPA. The final draft Joint Powers Agreement has no material changes from the initial draft.

The final Joint Powers Agreement has been drafted through MTC's General Counsel with assistance from two outside law firms. The document is modeled after the Bay Area Infrastructure Financing Authority (BAIFA) which is an existing JPA between the Metropolitan Transportation Commission (MTC) and Bay Area Toll Authority (BATA). As such, we are familiar with the powers and duties, and reporting and audit requirements while our auditors are used to the structure of the JPA.

Major components of the new JPA include:

- ABAG will be the governing and final issuing authority of ACFA.
- ACFA is administered by a Board of ABAG members, President of ABAG, Chair of ABAG Finance Committee, three members jointly appointed by the ABAG President and Chair of the ABAG Finance Committee.
- A staff committee with legal and financial support will conduct the initial credit review.
- FAN Executive Committee will serve as Credit Committee with first approval/rejection powers.

## **Approval of ACFA Joint Powers Agreement**

November 2, 2017

Page 2

- An ABAG ACFA Committee will have final say on the issuance of any financing.
- Officers will consist of MTC Executive and Senior Management Staff.
- The ACFA will have powers to finance all manner of public projects.
- All accounting, auditing, treasury and debt administration will be done through MTC finance staff.
- All funds will be received and paid by independent trustee.
- Potential year-end ABAG contribution of surplus funds subject to financial needs of the Authority (Section 8).

### **Recommended Action**

The ABAG FAN Executive Committee is requested to adopt the resolution authorizing the Joint Powers Agreement creating the Advancing California Finance Authority.



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Steve Heminger

### **Attachments**

Presentation

Resolution

ACFA Joint Powers Agreement

ACFA Joint Powers Agreement (Redline)

# Advancing California Finance Authority

## **Joint Powers Agreement ABAG and ABAG FAN**

ABAG FAN Executive Committee

October 18, 2017

10/12/2017

# Background

- **ABAG FAN Executive Committee has been evaluating a replacement financing conduit since the start of FY 2017**
  - Retained marketing consultant
  - Retained full time program staff
  - Presented with formal documents on June, 2017
- **Contract for Services effective July 1**
  - Operational responsibility for ABAG FAN transferred to MTC Finance operations
- **ABAG Executive Committee directed MTC staff to implement a new conduit financing authority by the end of October**
- **A draft of the new financing conduit has been prepared for Executive Committee review and consideration**
- **Final approval and implementations steps will be presented at the next meeting**

# Advancing California Finance Authority (ACFA)

- **New JPA is between ABAG and ABAG FAN**
  - **Governing Body**
    - ABAG board members
    - Final approval of all financings
  - **Credit Committee**
    - Executive Committee of ABAG FAN
    - Review / recommendation on all applications
  - **Officers**
    - MTC Executive Director and Senior Management
    - Accounting internal controls through MTC finance
    - Annual independent audit
- **The Executive Committee will continue to maintain responsibility and meet on matters strictly related to ABAG FAN**

# Powers

- **Finance projects**
  - Issue bonds
  - Incur debt, liabilities or obligations
  - Receive and pledge grants, contributions or assistance
  - Apply for letters of credit and financial guarantees
  - Assess fees for transaction, annual reporting requirements and administration
- **Adopt annual budget**
- **Annual independent audit**
- **Transaction Controls**
  - Internal review process
  - Independent Credit Committee
  - MTC establishes accounting and internal controls
  - Independent trustee processes all financial transactions
  - No funds process through MTC staff
- **Bonds are limited obligations not guarantees of the JPA or its members**

# Transaction Approval Process

- **Project Selection**
  - **RFQ for Qualified representatives**
    - Legal
    - Financial
    - Advisors
  - **Qualified firms present proposals for financing assistance**
  - **Staff reviews proposals**
    - Staff – administrative responsibility
    - Financial – Credit / Structure
    - Legal – Structure, protections and reporting responsibilities
  - **Presentation to Committee**



10/12/2017

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# Budget

## Initial Budget Estimate

- **Staffing**

• Full time staff – existing (2)	\$360,000
• Hourly staff – existing (2)	200,000
• Senior consultant	200,000
• Financial advisor	200,000
• Legal assistance	200,000
• Overhead	<u>280,000</u>
Total	\$1,440,000

- **Additional costs will include trustee fees, compliance review and reporting and audit**
- **Will bring formal revenue/budget presentation after startup is completed**
- **Still question of who responsible for costs**

## Transaction Consulting Support

- **At least at start we propose to utilize existing BATA resources**
- **Financial Advisor**
  - Sperry Capital – Credit analysis
  - PFM – Deal structure issuer support
- **Legal Advisor**
  - Nixon Peabody – Authority Counsel
  - William Donovan – Special Counsel

# Timing

- **Initial JPA draft – October**
- **Approval**
  - **FAN Executive Committee – October**
  - **ABAG Committee – November**
- **Procedures**
  - **Budget – January, 2018**
  - **Qualified representative selection – January, 2018**
  - **Project advertising and review – February, 2018**

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**ASSOCIATION OF BAY AREA GOVERNMENTS  
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

**APPROVAL OF JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE  
ASSOCIATION OF BAY AREA GOVERNMENTS AND THE ABAG FINANCE  
AUTHORITY FOR NONPROFIT CORPORATIONS FOR THE CREATION OF THE  
ADVANCING CALIFORNIA FINANCE AUTHORITY**

**RESOLUTION**

WHEREAS, the Association of Bay Area Governments (“ABAG”) is a “public agency” within the meaning of Section 6500 of the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the “Joint Powers Act”), and as such may, pursuant to the Joint Powers Act, enter into a joint exercise of powers agreement with one or more other public agencies; and

WHEREAS, the ABAG Finance Authority for Nonprofit Corporations (“ABAG Finance”) is a “public agency” within the meaning of Section 6500 of the Joint Powers Act, and, as such may, pursuant to the Joint Powers Act, enter into a joint exercise of powers agreement with one or more other public agencies; and

WHEREAS, ABAG and ABAG Finance intend to enter into a joint exercise of powers agreement among ABAG and ABAG Finance pursuant to the Joint Powers Act pursuant to which Advancing California Finance Authority (the “Financing Authority”) will be created to, among other things, undertake programs and projects by exercising the common powers of ABAG and ABAG Finance and the powers separately conferred by law upon the Financing Authority and finance such programs and projects through the

**ASSOCIATION OF BAY AREA GOVERNMENTS  
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
RESOLUTION**

issuance of bonds (as that term is defined in Section 6585(c) of the Joint Powers Act) under or in accordance with the Joint Powers Act or other applicable provisions of law; and

WHEREAS, ABAG and ABAG Finance may invite other public agencies (each, a “Participating Agency”) to enter into the joint exercise of powers agreement with ABAG and ABAG Finance from time to time following the creation of the Financing Authority; and

WHEREAS, there has been prepared and presented to this meeting a proposed form of joint exercise of powers agreement entitled “Advancing California Finance Authority”, attached hereto as Attachment A to this Resolution, and incorporated herein as though set forth at length, (the “Agreement”) between ABAG and ABAG Finance to form the Financing Authority; and

WHEREAS, under the Joint Powers Act and other applicable provisions of law and the Agreement, the Financing Authority will be a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Financing Authority will not be the debts, liabilities or obligations of any other entity or person; and

WHEREAS, it is to the advantage of ABAG and ABAG Finance and in the public interest of the area and persons served by them to enter into the Agreement in order to

**ASSOCIATION OF BAY AREA GOVERNMENTS  
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
RESOLUTION**

establish the Financing Authority for the purposes herein recited and the additional purposes set forth in the Agreement; and

WHEREAS, all acts, conditions and things required by the Constitution and the laws of the State of California to exist, to have happened and to have been performed in connection with the consummation of the Agreement authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and ABAG and ABAG Finance are now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution and delivery of the Agreement; now, therefore, be it

RESOLVED, that ABAG Finance specifically finds and declares that the statements, findings and determinations of ABAG Finance set forth in the preambles above and in the Agreement approved herein are true and correct; and be it further

RESOLVED, that ABAG Finance hereby authorizes Chair or Vice Chair of the Executive Committee (each, an "Authorized Representative") to execute and deliver, and the Secretary of ABAG Finance to attest and deliver, the Agreement in substantially the form presented to this meeting, with such additions thereto or changes therein as the Authorized Representative executing the same may require or approve, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

**ASSOCIATION OF BAY AREA GOVERNMENTS  
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
RESOLUTION**

RESOLVED, that the officers and agents of ABAG Finance are hereby authorized and directed to take all further actions necessary and convenient to establish the Finance Authority and that all actions heretofore taken by the members of ABAG Finance, committees of ABAG Finance, and officers and agents of ABAG Finance with respect to the Agreement and the formation of the Financing Authority are hereby acknowledged and affirmed; and, be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

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Charles Lomeli  
Chair of the Executive Committee

The above resolution was adopted by the ABAG Finance Authority for Nonprofit Corporations Executive Committee at a properly noticed special meeting held on November 8, 2017 in San Francisco, California at which a quorum was present and acting throughout.

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Frederick Castro  
Secretary  
ABAG Finance Authority for Nonprofit  
Corporations Executive Committee

JOINT EXERCISE OF POWERS AGREEMENT

Between

ASSOCIATION OF BAY AREA GOVERNMENTS

And

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

Dated as of \_\_\_\_\_, 2017

Creating the

ADVANCING CALIFORNIA FINANCE AUTHORITY

This JOINT EXERCISE OF POWERS AGREEMENT dated as of \_\_\_\_\_, 2017 (this “Agreement”), is among ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”), ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (“FAN”), and each “Program Member” as defined below.

W I T N E S S E T H:

WHEREAS, ABAG is a joint exercise of powers agency created and existing under the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the “Joint Powers Act”), that was formed by public agencies as defined in Section 6500 of the Joint Powers Act (“public agencies”); and

WHEREAS, FAN is also a joint exercise of powers agency created and existing under the Joint Powers Act that was formed by public agencies; and

WHEREAS, Pursuant to the Joint Powers Act, ABAG and FAN are entering into this Agreement to create a joint exercise of powers agency to exercise any power common to the contracting parties; and

WHEREAS, a joint exercise of powers agency established by ABAG and FAN pursuant to the Joint Powers Act is empowered, in exercising the authorized common powers of its members and the powers separately conferred by statute upon such entity, to undertake the activities specified in this Agreement, including without limitation, the issuance of bonds, notes and any other evidence of indebtedness (including, without limitation, the instruments set forth in Section 6585(c) of the Joint Powers Act) issued or incurred by the Authority pursuant to any applicable provision of the Joint Powers Act or any other lawful authority (“Bonds”); and

WHEREAS, each of ABAG and FAN has determined that it is to its advantage and in the public interest of the area and persons served by it, to enter into this Agreement in order to create a joint exercise of powers agency (the “Authority”) under the Joint Powers Act that will undertake programs and projects as herein provided by exercising the common powers of ABAG and FAN relating to such programs and projects and such other powers as are granted to the Authority by or pursuant to the Joint Powers Act and other laws; and

WHEREAS, ABAG and FAN may invite other public agencies to enter into this Agreement (each such public agency that is invited to and does enter into this Agreement is called a “Program Member”);

NOW, THEREFORE, the parties to this Agreement, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

**SECTION 1. PURPOSE.**

This Agreement is made pursuant to the Joint Powers Act to provide for the joint exercise of powers common to ABAG, FAN, and each Program Member and the powers separately conferred by or pursuant to law upon the Authority and to obtain funding to finance and refinance capital improvements that serve the public interest in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and from Bonds issued by the Authority pursuant to the Joint Powers Act and other laws. The purpose of this Agreement is to plan, develop, operate, and fund such capital improvements and to exercise such powers jointly by pooling efforts and activities to achieve those ends. This purpose will be accomplished and said powers exercised in the manner set forth in this Agreement and in accordance with the Joint Powers Act and all other applicable laws of the State of California.

## SECTION 2. TERM.

This Agreement shall continue in full force and effect for a period of 50 years from such date unless extended or earlier terminated by a supplemental written agreement of ABAG, FAN, and each Program Member, provided that this Agreement shall not terminate or be terminated until the date on which: all Bonds issued by the Authority shall have been paid or deemed paid in accordance with the resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing such Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an “Indenture”); and all other indebtedness and liabilities incurred by the Authority shall have been paid or provided for. The Authority shall cause all records regarding its formation, existence, operations and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority.

## SECTION 3. AUTHORITY.

### A. Creation of Authority.

There is hereby created under and pursuant to the Joint Powers Act an authority and public agency, separate and apart from ABAG and FAN, to be known as the Advancing California Finance Authority (“ACFA” or the “Authority”). The Authority’s debts, liabilities and obligations shall not constitute debts, liabilities or obligations of ABAG or FAN or any Program Member.

Within 30 days after the effective date of this Agreement, or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California and a copy of this Agreement and any amendment with the Controller of the State of California in the manner set forth in Sections 6503.5 and 6503.6, respectively, of the Joint Powers Act.

### B. Governing Board

The Authority shall be administered by a governing board (the “Board”), which shall consist of the following: the President of ABAG; the Chair of ABAG’s Finance Committee; and three members who are members of the Finance Committee and who are jointly appointed to the Board by the President of ABAG and the Chair of the Finance Committee. The members of the Board shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at Authority or committee meetings, each member may receive a per diem of one hundred dollars (\$100), but not to exceed a combined total of five meetings in any one calendar month, plus the necessary traveling expenses as may be authorized by the Authority.

### C. Meetings of Board

(1) Regular Meetings and Special Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each such regular meeting shall be fixed by resolution of the Board. Special meetings of the Board may be called by the chair or the vice chair of the Authority or by a majority of the members of the Board on the date and at the hour and place fixed by notice to all of the members of the Board.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (codified at California Government Code sections 54950 and following) (the “Brown Act”).

(3) Minutes. The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to ABAG and FAN.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

D. Officers; Duties

(1) The Chair of the ABAG Finance Committee shall be the Chair of the Authority. The President of ABAG shall be the Vice Chair of the Authority.

(2) The Chief Financial Officer of the Metropolitan Transportation Commission (“MTC”) is hereby appointed as an officer of the Authority and designated as Treasurer of the Authority. The Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act.

(3) The Chief Financial Officer of MTC is also hereby designated as Auditor of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505 and Section 6505.5 of the Joint Powers Act. The Auditor shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) The Treasurer and Auditor of the Authority shall prepare an annual budget and work plan for the Authority in sufficient detail to enable the Board to identify all proposed costs and charges. The Board shall adopt an annual budget and work plan by June 30<sup>th</sup> of each year for the following fiscal year. The Board may supplement, modify and amend the budget and work plan during the fiscal year as the Board determines to be necessary or appropriate.

(5) The Treasurer and Auditor of the Authority is designated as the public officer who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond as required by Section 6505.1 of the Joint Powers Act in the amount of \$100,000.

(6) The Treasurer of the Authority is hereby authorized and directed to prepare or cause to be prepared a report in writing on the first day of July, October, January, and April of each year to the Board and the Authority, which report shall describe the amount of money held by the Treasurer and Auditor of the Authority for the Authority, the amount of receipts since the last such report, and the amount paid out since the first such report.

(7) The Executive Director of MTC is hereby designated as Executive Director of the Authority.

(8) Each Deputy Executive Director of MTC is hereby designated as a Deputy Executive Director of the Authority.

(9) The General Counsel for MTC shall be and act as General Counsel to the Authority.

(10) The clerk of the executive board of ABAG is hereby designated as Secretary of the Authority.

(11) The Board may appoint such other officers and officials as may be necessary to carry out the duties and responsibilities of the Board.

E. Credit Committee.

(1) The Board shall appoint a Credit Committee consisting of the Executive Committee of FAN to review all financing applications and advise the Board as to whether the Board should grant financing assistance to applicants for financing or refinancing of capital improvements that serve the public interest. The chair and vice chair of the FAN Executive Committee shall be the chair and vice chair, respectively, of the Credit Committee. In the event the Executive Committee of FAN notifies the Board that it no longer wishes to serve as the Credit Committee to the Board, the Board may appoint a successor Credit Committee and its chair and vice chair.

(2) The date, hour and place of each regular Credit Committee meeting shall be fixed by resolution of the Credit Committee. Special meetings of the Credit Committee may be called by the chair or the vice chair of the Credit Committee on the date and at the hour and place fixed by notice to all of the members of the Credit Committee. All regular and special meetings of the Credit Committee shall be called, noticed, held and conducted subject to the provisions of the Brown Act. The Credit Committee shall cause minutes of all meetings of the Credit Committee to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Credit Committee, the officers of the Authority and ABAG and FAN.

F. Conflict of Interest Code.

The MTC conflict of interest code shall apply to the Authority and the Authority shall comply in all respects with the Political Reform Act of 1974 and the rules and regulations of the California Fair Political Practices Commission.

G. Rules and Regulations.

The Authority may adopt, from time to time, by resolution of the Board, such rules and regulations for the conduct of its meetings and affairs as the Board determines are necessary or convenient.

**SECTION 4. POWERS.**

The Authority shall have any and all powers that are common powers of ABAG, FAN, and the Program Members and the powers separately conferred by law upon the Authority, to plan capital improvements that serve the public interest and obtain funding to finance and refinance such capital improvements in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and from Bonds issued by the Authority pursuant to the Joint Powers Act and other laws. All such powers, whether common to the Parties or separately conferred by or pursuant to law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Joint Powers Act, including Article 2 and Article 4 thereof, or any other applicable provision of law and to pledge any grants, contributions, appropriations, loans or other assistance or property or revenues or the rights thereto as security for such Bonds and other indebtedness; to enter into bond purchase agreements and continuing

covenant agreements with respect to the issuance and sale of such Bonds and other indebtedness; to apply for letters of credit, bond insurance, standby bond purchase agreements, or other forms of credit or liquidity support in order to secure the repayment of Bonds and enter into agreements in connection therewith; to purchase obligations of any Party or other entity as may be permitted under the Joint Powers Act; and to receive grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and any other persons, firms, corporations or governmental entities. The Authority shall have all additional powers conferred under the Joint Powers Act or implied therefrom.

The Authority shall continue to exercise the powers herein conferred upon it until the end of the term of this Agreement as provided in Section 2.

**SECTION 5. MANNER OF EXERCISING POWERS.**

To the extent required by the Joint Powers Act, the manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which ABAG could exercise such powers and perform such duties pursuant to Section 6509 of the Joint Powers Act. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

**SECTION 6. FISCAL YEAR.**

For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of the Authority being, until changed by resolution of the Board, the period from July 1 to and including the following June 30 except for the first Fiscal Year which shall be the period from the date of this Agreement to and including June 30, 2018.

**SECTION 7. CONTRIBUTIONS AND ADVANCES.**

Voluntary contributions or advances of funds and property may be made to the Authority by ABAG and FAN for any of the purposes of this Agreement and shall be accounted for in an appropriate Authority fund. Any such advance may, but need not, be made subject to repayment, and if made subject to repayment shall be repaid in the manner agreed upon by the contributor and the Authority at the time of making such advance. It is mutually understood and agreed that neither ABAG nor FAN has any obligation to make advances or contributions to the Authority. ABAG and FAN may allow the use of personnel, equipment or property by the Authority.

**SECTION 8. DISPOSITION OF FUNDS AND OTHER ASSETS.**

During the 120-day period following the end of each Fiscal Year of the Authority, ABAG may request that unencumbered funds held by the Authority at the end of that Fiscal Year be paid in whole or in part to ABAG for use in projects and programs approved by the executive board of ABAG. Such requests shall be honored by the Authority following the completion of the audit for that Fiscal Year if the Board finds and determines that the funds so requested are surplus funds that are not reasonably needed by the Authority for its projects and programs and a prudent reserve.

Upon the termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, including its pension obligations, and after any repayment of advances required by Section 7, all property of the Authority, both real and personal, shall be distributed to ABAG for its projects and programs.

## **SECTION 9. BONDS.**

### **A. Authority to Issue Bonds.**

When authorized by or pursuant to the Joint Powers Act or other applicable provisions of law and by resolution of the Board consistent with the Board's debt policy, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

### **B. Bonds Limited Obligations.**

The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including ABAG, FAN and any Program Member, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof, including ABAG, FAN, and each Program Member shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State of California or any public agency or instrumentality thereof, including ABAG, FAN, and each Program Member in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Board or Credit Committee, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

## **SECTION 10. INTEREST RATE SWAPS AND OTHER FINANCIAL PRODUCTS.**

The Authority, when authorized by resolution of the Board, may enter into hedging or other arrangements authorized by California Government Code sections 5920-5923 on terms and conditions authorized by the Board.

## **SECTION 11. ACCOUNTS AND REPORTS.**

### **A. Books and Records.**

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by ABAG, FAN, and each Program Member.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting

procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section.

**B. Audits.**

The Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Joint Powers Act. Any costs of the audit, including contracts with, or employment of, certified public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

**C. Audit Reports.**

Within 180 days after the close of each fiscal year the Auditor of the Authority shall file a report of the audit performed pursuant to Subsection B of this Section 11 as required by the Joint Powers Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Joint Powers Act.

**SECTION 12. FUNDS.**

Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds and maintain records of accounts and disbursements in accordance with generally accepted accounting principles.

**SECTION 13. NOTICES.**

Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

**SECTION 14. WITHDRAWAL AND TERMINATION**

Neither ABAG nor FAN may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 2. Any Program Member may withdraw from this Agreement at any time by written notice to the Authority and thereby cease to be a Program Member. The Board may at any time terminate the membership of a Program Member by written notice to the Program Member if it determines that it is in the best interests of the Authority to do so.

**SECTION 15. INDEMNIFICATION.**

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a member of the Board or Credit Committee, officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board or Credit Committee, officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of any action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**SECTION 16. IMMUNITIES.**

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, employees or other representatives of MTC, ABAG, FAN, or Program Member when performing their respective functions within the territorial limits of their public agency, shall apply to them to the same degree and extent while engaged as a director, officer, agent, employee or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement whether within or outside of the boundaries of MTC, ABAG or FAN or the Program Member.

**SECTION 17. COUNSEL, CONSULTANTS AND ADVISORS.**

The Authority may employ the services of independent counsel, including bond and other special counsel, financing, engineering, construction, utility and other consultants and advisors, and accountants and auditors in connection with the programs undertaken pursuant to this Agreement, including the issuance of Bonds and the entry into financial products authorized by Section 10 hereof. The fees and expenses of such counsel, consultants, advisors, accountants and auditors, and the expenses of the Authority in connection with such programs and projects, shall be paid from the proceeds of Bonds or any other unencumbered funds of the Authority available for such purpose.

**SECTION 18. AMENDMENTS.**

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by ABAG and FAN. Any amendment to this Agreement that the Board determines may have a material adverse impact on one or more Program Members must be consented to in writing by each such Program Member to become effective.

**SECTION 19. LOCAL APPROVAL AND NOTICE REQUIREMENTS.**

The Authority shall comply with any local approval requirements and notice requirements made applicable to it by Section 6586.5 of the Joint Powers Act. The Authority may request a Program Member to provide one or more approvals and findings required by Section 6586.5(a), but no Program Member is obligated or required to do so.

**SECTION 20. PARTIAL INVALIDITY.**

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 21. SUCCESSORS.**

This Agreement shall be binding upon and shall inure to the benefit of the successors of ABAG, FAN, and the Program Members. Except to the extent expressly provided herein, no party to this Agreement may assign any right or obligation hereunder without the consent of the others.

**SECTION 22. MISCELLANEOUS.**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by ABAG or FAN or any Program Member, such action may be exercised through the officers, staff or employees of ABAG or FAN or the Program Member, as the case may be, in the manner provided by law.

The section and subsection headings herein are for convenience only and are not to be construed as modifying or governing the language in the section or subsection referred to.

This Agreement is made in the State of California, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State of California.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of ABAG and FAN at 9:00 a.m., California time, on the first date as of which each of ABAG and FAN has delivered to the other party an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of such party approving this Agreement and the execution and delivery hereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized.

ASSOCIATION OF BAY AREA GOVERNMENTS

By \_\_\_\_\_  
Julie Pierce, President

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

By \_\_\_\_\_  
Charles A. Lomeli, Chair

**FORM OF SIGNATURE PAGE FOR PROGRAM MEMBERS**

IN WITNESS WHEREOF, the undersigned Public Agency has caused this Agreement to be executed as a Program Member by its representative thereunto duly authorized.

\_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

JOINT EXERCISE OF POWERS AGREEMENT

Between

ASSOCIATION OF BAY AREA GOVERNMENTS

And

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

Dated as of \_\_\_\_\_, 2017

Creating the

ADVANCING CALIFORNIA FINANCE AUTHORITY

This JOINT EXERCISE OF POWERS AGREEMENT dated as of \_\_\_\_\_, 2017 (this “Agreement”), is among ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”), ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (“FAN”), and each “Program Member” as defined below.

WITNESSETH:

WHEREAS, ABAG is a joint exercise of powers agency created and existing under the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the “Joint Powers Act”), that was formed by public agencies as defined in Section 6500 of the Joint Powers Act (“public agencies”); and

WHEREAS, FAN is also a joint exercise of powers agency created and existing under the Joint Powers Act that was formed by public agencies; and

WHEREAS, Pursuant to the Joint Powers Act, ABAG and FAN are entering into this Agreement to create a joint exercise of powers agency to exercise any power common to the contracting parties; and

WHEREAS, a joint exercise of powers agency established by ABAG and FAN pursuant to the Joint Powers Act is empowered, in exercising the authorized common powers of its members and the powers separately conferred by statute upon such entity, to undertake the activities specified in this Agreement, including without limitation, the issuance of bonds, notes and any other evidence of indebtedness (including, without limitation, the instruments set forth in Section 6585(c) of the Joint Powers Act) issued or incurred by the Authority pursuant to any applicable provision of the Joint Powers Act or any other lawful authority (“Bonds”); and

WHEREAS, each of ABAG and FAN has determined that it is to its advantage and in the public interest of the area and persons served by it, to enter into this Agreement in order to create a joint exercise of powers agency (the “Authority”) under the Joint Powers Act that will undertake programs and projects as herein provided by exercising the common powers of ABAG and FAN relating to such programs and projects and such other powers as are granted to the Authority by or pursuant to the Joint Powers Act and other laws; and

WHEREAS, ABAG and FAN may invite other public agencies to enter into this Agreement (each such public agency that is invited to and does enter into this Agreement is called a “Program Member”);

NOW, THEREFORE, the parties to this Agreement, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

**SECTION 1. PURPOSE.**

This Agreement is made pursuant to the Joint Powers Act to provide for the joint exercise of powers common to ABAG, FAN, and each Program Member and the powers separately conferred by or pursuant to law upon the Authority and to obtain funding to finance and refinance capital improvements that serve the public interest in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and from Bonds issued by the Authority pursuant to the Joint Powers Act and other laws. The purpose of this Agreement is to plan, develop, operate, and fund such capital improvements and to exercise such powers jointly by pooling efforts and activities to achieve those ends. This purpose will be accomplished and said powers exercised in the manner set forth in this Agreement and in accordance with the Joint Powers Act and all other applicable laws of the State of California.

## SECTION 2. TERM.

This Agreement shall continue in full force and effect for a period of 50 years from such date unless extended or earlier terminated by a supplemental written agreement of ABAG, FAN, and each Program Member, provided that this Agreement shall not terminate or be terminated until the date on which: all Bonds issued by the Authority shall have been paid or deemed paid in accordance with the resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing such Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an “Indenture”); and all other indebtedness and liabilities incurred by the Authority shall have been paid or provided for. The Authority shall cause all records regarding its formation, existence, operations and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority.

## SECTION 3. AUTHORITY.

### A. Creation of Authority.

There is hereby created under and pursuant to the Joint Powers Act an authority and public agency, separate and apart from ABAG and FAN, to be known as the Advancing California Finance Authority (“ACFA” or the “Authority”). The Authority’s debts, liabilities and obligations shall not constitute debts, liabilities or obligations of ABAG or FAN or any Program Member.

Within 30 days after the effective date of this Agreement, or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California and a copy of this Agreement and any amendment with the Controller of the State of California in the manner set forth in Sections 6503.5 and 6503.6, respectively, of the Joint Powers Act.

### B. Governing Board

The Authority shall be administered by a governing board (the “Board”), which shall consist of the following: the President of ABAG; the Chair of ABAG’s Finance Committee; and three members who are members of the Finance Committee and who are jointly appointed to the Board by the President of ABAG and the Chair of the Finance Committee. The members of the Board shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at Authority or committee meetings, each member may receive a per diem of one hundred dollars (\$100), but not to exceed a combined total of five meetings in any one calendar month, plus the necessary traveling expenses as may be authorized by the Authority.

### C. Meetings of Board

(1) Regular Meetings and Special Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each such regular meeting shall be fixed by resolution of the Board. Special meetings of the Board may be called by the chair or the vice chair of the Authority or by a majority of the members of the Board on the date and at the hour and place fixed by notice to all of the members of the Board.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (codified at California Government Code sections 54950 and following) (the “Brown Act”).

(3) Minutes. The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to ABAG and FAN.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

D. Officers; Duties

(1) The Chair of the ABAG Finance Committee shall be the Chair of the Authority. The President of ABAG shall be the Vice Chair of the Authority.

(2) The Chief Financial Officer of the Metropolitan Transportation Commission (“MTC”) is hereby appointed as an officer of the Authority and designated as Treasurer of the Authority. The Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act.

(3) The Chief Financial Officer of MTC is also hereby designated as Auditor of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505 and Section 6505.5 of the Joint Powers Act. The Auditor shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) The Treasurer and Auditor of the Authority shall ~~adopt~~prepare an annual ~~operating~~-budget and work plan for the Authority in sufficient detail to enable the Board to identify all proposed costs and charges. The Board shall adopt an annual budget and work plan by June 30<sup>th</sup> of each year for the following fiscal year. The Board may supplement, modify ~~or~~and amend ~~such~~the budget and work plan during the fiscal year as the Board determines to be necessary or appropriate. ~~As part of the budget formulation, MTC shall determine the charges, if any, to be made against the Authority for the services of the Treasurer and Auditor. In addition, MTC may provide staff for the Authority and shall determine for purposes of the Authority’s budget the charges to be paid by the Authority for such services. All such charges shall be subject to the approval of the Board.~~

(5) The Treasurer and Auditor of the Authority is designated as the public officer who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond as required by Section 6505.1 of the Joint Powers Act in the amount of \$100,000.

(6) The Treasurer of the Authority is hereby authorized and directed to prepare or cause to be prepared a report in writing on the first day of July, October, January, and April of each year to the Board and the Authority, which report shall describe the amount of money held by the Treasurer and Auditor of the Authority for the Authority, the amount of receipts since the last such report, and the amount paid out since the first such report.

(7) The Executive Director of MTC is hereby designated as Executive Director of the Authority.

(8) Each Deputy Executive Director of MTC is hereby designated as a Deputy Executive Director of the Authority.

(9) The General Counsel for MTC shall be and act as General Counsel to the Authority.

(10) The clerk of the executive board of ABAG is hereby designated as Secretary of the Authority.

(11) The Board may appoint such other officers and officials as may be necessary to carry out the duties and responsibilities of the Board.

E. Credit Committee.

(1) The Board shall appoint a Credit Committee consisting of the Executive Committee of FAN to review all financing applications and advise the Board as to whether the Board should grant financing assistance to applicants for financing or refinancing of capital improvements that serve the public interest. The chair and vice chair of the FAN Executive Committee shall be the chair and vice chair, respectively, of the Credit Committee. In the event the Executive Committee of FAN notifies the Board that it no longer wishes to serve as the Credit Committee to the Board, the Board may appoint a successor Credit Committee and its chair and vice chair.

(2) The date, hour and place of each regular Credit Committee meeting shall be fixed by resolution of the Credit Committee. Special meetings of the Credit Committee may be called by the chair or the vice chair of the Credit Committee on the date and at the hour and place fixed by notice to all of the members of the Credit Committee. All regular and special meetings of the Credit Committee shall be called, noticed, held and conducted subject to the provisions of the Brown Act. The Credit Committee shall cause minutes of all meetings of the Credit Committee to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Credit Committee, the officers of the Authority and ABAG and FAN.

F. Conflict of Interest Code.

The MTC's conflict of interest code shall apply to the Authority and the Authority shall comply in all respects with the Political Reform Act of 1974 and the rules and regulations of the California Fair Political Practices Act Commission.

G. Rules and Regulations.

The Authority may adopt, from time to time, by resolution of the Board, such rules and regulations for the conduct of its meetings and affairs as the Board determines are necessary or convenient.

**SECTION 4. POWERS.**

The Authority shall have any and all powers that are common powers of ABAG, FAN, and the Program Members and the powers separately conferred by law upon the Authority, to plan capital improvements that serve the public interest and obtain funding to finance and refinance such capital improvements in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and from Bonds issued by the Authority pursuant to the Joint Powers Act and other laws. All such powers, whether common to the Parties or separately conferred by or pursuant to law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible,

wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Joint Powers Act, including Article 2 and Article 4 thereof, or any other applicable provision of law and to pledge any grants, contributions, appropriations, loans or other assistance or property or revenues or the rights thereto as security for such Bonds and other indebtedness; to enter into bond purchase agreements and continuing covenant agreements with respect to the issuance and sale of such Bonds and other indebtedness; to apply for letters of credit, bond insurance, standby bond purchase agreements, or other forms of credit or liquidity support in order to secure the repayment of Bonds and enter into agreements in connection therewith; to purchase obligations of any Party or other entity as may be permitted under the Joint Powers Act; and to receive grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and any other persons, firms, corporations or governmental entities. The Authority shall have all additional powers conferred under the Joint Powers Act or implied therefrom.

The Authority shall continue to exercise the powers herein conferred upon it until the end of the term of this Agreement as provided in Section 2.

#### **SECTION 5. MANNER OF EXERCISING POWERS.**

To the extent required by the Joint Powers Act, the manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which ABAG could exercise such powers and perform such duties pursuant to Section 6509 of the Joint Powers Act. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

#### **SECTION 6. FISCAL YEAR.**

For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of the Authority being, until changed by resolution of the Board, the period from July 1 to and including the following June 30 except for the first Fiscal Year which shall be the period from the date of this Agreement to and including June 30, 2018.

#### **SECTION 7. CONTRIBUTIONS AND ADVANCES.**

Voluntary contributions or advances of funds and property may be made to the Authority by ABAG and FAN for any of the purposes of this Agreement and shall be accounted for in an appropriate Authority fund. Any such advance may, but need not, be made subject to repayment, and if made subject to repayment shall be repaid in the manner agreed upon by the contributor and the Authority at the time of making such advance. It is mutually understood and agreed that neither ABAG nor FAN has any obligation to make advances or contributions to the Authority. ABAG and FAN may allow the use of personnel, equipment or property by the Authority.

#### **SECTION 8. DISPOSITION OF FUNDS AND OTHER ASSETS.**

During the 120-day period following the end of each Fiscal Year of the Authority, ABAG may request that unencumbered funds held by the Authority at the end of that Fiscal Year be paid in whole or in part to ABAG for use in projects and programs approved by the executive board of ABAG. Such requests shall be honored by the Authority following the completion of the audit for that Fiscal Year if the Board finds and determines that the funds so requested are surplus funds that are not reasonably needed by the Authority for its projects and programs and a prudent reserve.

Upon the termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, including its pension obligations, and after any repayment of advances required by Section 7, all property of the Authority, both real and personal, shall be distributed to ABAG for its projects and programs.

## **SECTION 9. BONDS.**

### **A. Authority to Issue Bonds.**

When authorized by or pursuant to the Joint Powers Act or other applicable provisions of law and by resolution of the Board consistent with the Board's debt policy, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

### **B. Bonds Limited Obligations.**

The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including ABAG, FAN and any Program Member, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof, including ABAG, FAN, and each Program Member shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State of California or any public agency or instrumentality thereof, including ABAG, FAN, and each Program Member in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Board or Credit Committee, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

## **SECTION 10. INTEREST RATE SWAPS AND OTHER FINANCIAL PRODUCTS.**

The Authority, when authorized by resolution of the Board, may enter into hedging or other arrangements authorized by California Government Code sections 5920-5923 on terms and conditions authorized by the Board.

## **SECTION 11. ACCOUNTS AND REPORTS.**

### **A. Books and Records.**

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted

accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by ABAG, FAN, and each Program Member.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section.

**B. Audits.**

The Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Joint Powers Act. Any costs of the audit, including contracts with, or employment of, certified public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

**C. Audit Reports.**

Within 180 days after the close of each fiscal year the Auditor of the Authority shall file a report of the audit performed pursuant to Subsection B of this Section 11 as required by the Joint Powers Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Joint Powers Act.

**SECTION 12. FUNDS.**

Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds and maintain records of accounts and disbursements in accordance with generally accepted accounting principles.

**SECTION 13. NOTICES.**

Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

**SECTION 14. WITHDRAWAL AND TERMINATION**

Neither ABAG nor FAN may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 2. Any Program Member may withdraw from this Agreement at any time by written notice to the Authority and thereby cease to be a Program Member. The Board may at any time terminate the membership of a Program Member by written notice to the Program Member if it determines that it is in the best interests of the Authority to do so.

**SECTION 15. INDEMNIFICATION.**

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a member of the Board or Credit Committee, officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board or Credit Committee, officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if

such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of any action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

#### **SECTION 16. IMMUNITIES.**

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, employees or other representatives of MTC, ABAG, FAN, or Program Member when performing their respective functions within the territorial limits of their public agency, shall apply to them to the same degree and extent while engaged as a director, officer, agent, employee or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement whether within or outside of the boundaries of MTC, ABAG or FAN or the Program Member.

#### **SECTION 17. COUNSEL, CONSULTANTS AND ADVISORS.**

The Authority may employ the services of independent counsel, including bond and other special counsel, financing, engineering, construction, utility and other consultants and advisors, and accountants and auditors in connection with the programs undertaken pursuant to this Agreement, including the issuance of Bonds and the entry into financial products authorized by Section 10 hereof. The fees and expenses of such counsel, consultants, advisors, accountants and auditors, and the expenses of the Authority in connection with such programs and projects, shall be paid from the proceeds of Bonds or any other unencumbered funds of the Authority available for such purpose.

#### **SECTION 18. AMENDMENTS.**

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by ABAG and FAN. Any amendment to this Agreement that the Board determines may have a material adverse impact on one or more Program Members must be consented to in writing by each such Program Member to become effective.

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The Authority shall comply with any local approval requirements and notice requirements made applicable to it by Section 6586.5 of the Joint Powers Act. The Authority may request a Program Member to provide one or more approvals and findings required by Section 6586.5(a), but no Program Member is obligated or required to do so.

#### **SECTION 20. PARTIAL INVALIDITY.**

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 21. SUCCESSORS.**

This Agreement shall be binding upon and shall inure to the benefit of the successors of ABAG, FAN, and the Program Members. Except to the extent expressly provided herein, no party to this Agreement may assign any right or obligation hereunder without the consent of the others.

**SECTION 22. MISCELLANEOUS.**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by ABAG or FAN or any Program Member, such action may be exercised through the officers, staff or employees of ABAG or FAN or the Program Member, as the case may be, in the manner provided by law.

The section and subsection headings herein are for convenience only and are not to be construed as modifying or governing the language in the section or subsection referred to.

This Agreement is made in the State of California, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State of California.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of ABAG and FAN at 9:00 a.m., California time, on the first date as of which each of ABAG and FAN has delivered to the other party an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of such party approving this Agreement and the execution and delivery hereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized.

ASSOCIATION OF BAY AREA GOVERNMENTS

By \_\_\_\_\_  
Julie Pierce, President

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

By \_\_\_\_\_  
Charles A. Lomeli, Chair

**FORM OF SIGNATURE PAGE FOR PROGRAM MEMBERS**

IN WITNESS WHEREOF, the undersigned Public Agency has caused this Agreement to be executed as a Program Member by its representative thereunto duly authorized.

\_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

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