

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

AGENDA

REVISED

ABAG EXECUTIVE BOARD MEETING NO. 422

Thursday, February 16, 2017, 7:00 PM

Location:

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

Teleconference Location:

10840 Ridgeview Avenue, San Jose, California 95127

The ABAG Executive Board may act on any item on this agenda.

Agenda and attachments available at <http://www.abag.ca.gov/>

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

- 1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**
- 2. PUBLIC COMMENT**
INFORMATION
- 3. ANNOUNCEMENTS**
INFORMATION
- 4. PRESIDENT'S REPORT**
INFORMATION
- 5. ACTING EXECUTIVE DIRECTOR'S REPORT**
INFORMATION

6. CONSENT CALENDAR

ACTION

Unless there is a request by an Executive Board member to take up an item on the Consent Calendar separately, the Consent Calendar will be acted upon in one motion.

A. Approval of Executive Board Summary Minutes of Meeting No. 421 held on January 19, 2017

Attachment: Summary Minutes of January 19, 2017

B. Ratification of Committee Appointments

The Executive Board is requested to ratify the following committee appointments:

Administrative Committee

To Be Announced

Finance and Personnel Committee

To Be Announced

Legislation and Governmental Organization Committee

To Be Announced

Regional Planning Committee

To Be Announced

C. Authorization to Enter into New Contract with San Francisco Estuary Institute (SFEI) for the *Healthy Watersheds, Resilient Baylands* Project

The Executive Board is requested to authorize the Executive Director or designee to enter into this agreement with SFEI for Healthy Watersheds, Resilient Baylands project in the amount not to exceed \$988,335.14.

Attachments: SFEI Healthy Watersheds; SFEI Draft Subrecipient Agreement

D. Authorization to Enter into New Contract with Grassroots Ecology for the *Healthy Watersheds, Resilient Baylands* Project

The Executive Board is requested to authorize the Executive Director or designee to enter into a new Subrecipient Agreement with the Grassroots Ecology for the Healthy Watersheds, Resilient Baylands Project in the amount not to exceed \$52,250.

Attachments: Grassroots Ecology Healthy Watersheds; Grassroots Ecology Draft Subrecipient Agreement

E. Authorization to Enter into New Contract with City of Sunnyvale for the *Healthy Watersheds, Resilient Baylands* Project

The Executive Board is requested to authorize the Executive Director or designee to enter into a new Subrecipient Agreement with the City of Sunnyvale for the Health Watersheds, Resilient Baylands project in the amount not to exceed \$380,000.

Attachments: City of Sunnyvale Healthy Watersheds; City of Sunnyvale Draft Subrecipient Agreement

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7. REPORT ON LOWER SAN JOAQUIN RIVER FLOW OBJECTIVES

ACTION

Miriam Chion, ABAG Planning and Research Director, will introduce a panel of speakers, including Leslie F. Grober, Deputy Director for Water Rights, State Water Resources Control Board; Steven Ritchie, Assistant General Manager of the Water Enterprise, San Francisco Public Utilities Commission; and Peter Drekmeier, Policy Director, Tuolumne River Trust, who will present on the proposed State Water Resources Control Board's Phase I Substitute Environmental Document for Flow Objectives on the Lower San Joaquin River. Following presentations and discussions, the Executive Board is requested to approve the submittal of the attached letter.

Attachment: Lower San Joaquin River Flow Objectives

8. REPORT ON ABAG/MTC OPTION 7 IMPLEMENTATION ACTION PLAN

A. REPORT ON CONTRACT FOR SERVICES

INFORMATION

The Executive Board is requested to discuss and provide policy guidance on draft Contract for Services that will govern how ABAG and MTC will share a consolidated staff.

Attachment: Memo Draft Contract for Services and Attachments

B. REPORT ON POTENTIAL CONFLICT OF INTEREST

ACTION

The Executive Board is requested to accept a report that staff members negotiating the Contract for Services have a 'remote interest' in the contract. [Govt Code § 1091.5(a)(9)]

Attachment: Contract for Services and Government Code Section 1090

9. ADJOURNMENT

The next meeting of the ABAG Executive Board will be on March 16, 2017.

Submitted:

/s/ Brad Paul, Acting Secretary-Treasurer

Date Submitted: February 7, 2017

Date Posted: February 14, 2017

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SUMMARY MINUTES (DRAFT)

ABAG Executive Board Meeting No. 421
Thursday, January 19, 2017
Bay Area Metro Center
375 Beale Street, Board Room
San Francisco, California

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ABAG President Julie Pierce, Councilmember, City of Clayton, called the meeting of the Executive Board of the Association of Bay Area Governments to order at about 7:03 p.m.

President Pierce welcomed the following new Executive Board members: Dennis Rodoni, Supervisor, County of Marin; Belia Ramos, Supervisor, County of Napa; Jesse Arreguin, Mayor, City of Berkeley; and Chris Clark, Councilmember, City of Sunnyvale; and Monica Brown, Supervisor, County of Solano.

President Pierce announced that Josh Winters, Western Solutions, was participating by teleconference and will later speak under Item 11.

A quorum of the ABAG Executive Board was present at about 7:03 p.m.

Representatives and Alternates Present

Jurisdiction

Supervisor Candace Andersen	County of Contra Costa
Mayor Jesse Arreguin	City of Berkeley
Councilmember Annie Campbell Washington	City of Oakland
Supervisor Cindy Chavez	County of Santa Clara
Councilmember Chris Clark	City of Mountain View
Supervisor David D. Cortese	County of Santa Clara
Mayor Pat Eklund	City of Novato
Director Nicole Elliott, Leg and Gov Affairs	City and County of San Francisco
Mayor Leon Garcia	City of American Canyon
Supervisor Scott Haggerty	County of Alameda
Supervisor Erin Hannigan	County of Solano
Vice Mayor Dave Hudson	City of San Ramon
Mayor Wayne J. Lee	City of Millbrae
Vice Mayor Jake Mackenzie	City of Rohnert Park
Supervisor Karen Mitchoff	County of Contra Costa
Councilmember Raul Peralez	City of San Jose
Councilmember Julie Pierce	City of Clayton
Supervisor Dave Pine	County of San Mateo
Supervisor David Rabbitt	County of Sonoma
Supervisor Belia Ramos	County of Napa
Supervisor Dennis Rodoni	County of Marin
Mayor Greg Scharff	City of Palo Alto

Representatives Absent

Jurisdiction

Mayor Len Augustine	City of Vacaville
Supervisor David Canepa	County of San Mateo
Councilmember Lan Diep	City of San Jose

Councilmember Lynette Gibson McElhaney	City of Oakland
Councilmember Abel J. Guillen	City of Oakland
Mayor Pradeep Gupta	City of South San Francisco
Mayor Barbara Halliday	City of Hayward
Councilmember Sergio Jimenez	City of San Jose
Supervisor Jane Kim	City and County of San Francisco
Director William Kissinger *	RWQCB
Mayor Edwin Lee	City and County of San Francisco
Supervisor Nathan Miley	County of Alameda
Mayor Trish Spencer	City of Alameda

[* Non-voting Advisory Member]

2. PUBLIC COMMENT

There was no public comment.

3. ANNOUNCEMENTS

There were no announcements.

4. PRESIDENT'S REPORT

President Pierce reported on the following:

The Special General Assembly, *Shaping the Future of ABAG: What Does the Bay Area Need From Its Council of Governments?*, on January 30, 2017, will provide a dialogue on *The Future Role of the Council of Governments; Defining the Needs of the Bay Area's Towns, Cities, and Counties Local Coordination to Address Regional Challenges*. Online registration is available. Members are invited to complete an online survey accessible by link on the registration page. A shuttle service will be provided.

5. ACTING EXECUTIVE DIRECTOR'S REPORT

There was no Acting Executive Director's report.

6. CONSENT CALENDAR

President Pierce recognized a motion by Cindy Chavez, Supervisor, County of Santa Clara, which was seconded by Karen Mitchoff, Supervisor, County of Contra Costa, to approve the Consent Calendar, including the ratification of committee appointments, and to request staff in the future to attach copies of the contract to be discussed, an explanation of process used to choose the vendor, and, if contracts are retroactive, an explanation of wh.

There was no discussion.

There was no public comment.

The aye votes were: Andersen, Chavez, Clark, Cortese, Eklund, Elliott, Garcia, Haggerty, Hannigan, Hudson, Lee, W., Mackenzie, Mitchoff, Peralez, Pierce, Pine, Rabbitt, Ramos, Rodoni, Scharff (20)

The nay votes were: None.

Abstentions were: None.

Absent were: Arreguin, Augustine, Campbell Washington, Canepa, Diep, Gibson McElhaney, Guillen, Gupta, Halliday, Jimenez, Kim, Lee, E., Miley (13)

The motion passed unanimously.

A. Approval of Executive Board Summary Minutes of Special Meeting No. 420 held on December 15, 2016

The ABAG Executive Board approved its Summary Minutes of the special meeting on December 15, 2016.

B. Ratification of Committee Appointments

The Executive Board ratified the following committee appointments:

Bay Area Regional Collaborative

Scott Haggerty, Supervisor, County of Alameda

Julie Pierce, Councilmember, City of Clayton

David Rabbitt, Supervisor, County of Sonoma

Pradeep Gupta, Mayor, City of South San Francisco

San Francisco Bay Conservation and Development Commission

Tom Butt, Mayor, City of Richmond (East Bay, Representative)

Pauline Cutter, Mayor, City of San Leandro (East Bay, Alternate)

Pat Showalter, Mayor, City of Mountain View (South Bay, Representative)

San Francisco Bay Restoration Authority Governing Board

Aaron Peskin, Supervisor, City and County of San Francisco (West Bay)

Kathrin Sears, Supervisor, County of Marin (North Bay)

Greg Scharff, Mayor, City of Palo Alto (Bayside Cities/Park District)

C. Ratification of Contract with Gigantic Idea Studios for Greener Pesticides for Cleaner Waterways Grant

The Executive Board ratified the contract with Gigantic Idea Studios for Greener Pesticides for Cleaner Waterways Grant in the amount of \$90,050, beginning October 1, 2016 and ending September 29, 2017.

D. Ratification of an Agreement with Seligson Consulting

The Executive Board ratified the agreement with Seligson Consulting approving the Executive Director or designee, entering into the agreement with Seligson Consulting to perform impact estimates for housing and flood hazard scenarios for the Resilience Program and entering into agreement with Seligson Consulting to perform HAZUS analysis.

E. Ratification of an Agreement with Urban Resilience Policy

The Executive Board ratified the agreement with Urban Resilience Strategies approving the Executive Director or designee, entering into the agreement with Urban Resilience Strategies to provide programmatic and technical support to the Resilience Program.

7. ABAG LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE REPORT

Committee Chair Scott Haggerty, Supervisor, County of Alameda, reported on committee activities, including the following: approval of summary minutes of meeting on November 17, 2016; report and approval of draft legislative priorities 2017; report on new legislation proposed for 2017 Legislative Session; report update on accessory dwelling units; report on legislative session 2015-2016; report on proposed legislative reception on March 22, 2017.

President Pierce recognized a motion by Scott Haggerty, Supervisor, County of Alameda, which was seconded by Dave Hudson, Vice Mayor, City of San Ramon, to approve the committee report.

There was no discussion.

There was no public comment.

The aye votes were: Andersen, Chavez, Clark, Cortese, Eklund, Elliott, Garcia, Haggerty, Hannigan, Hudson, Lee, W., Mackenzie, Mitchoff, Peralez, Pierce, Pine, Rabbitt, Ramos, Rodoni, Scharff (20)

The nay votes were: None.

Abstentions were: None.

Absent were: Arreguin, Augustine, Campbell Washington, Canepa, Diep, Gibson McElhaney, Guillen, Gupta, Halliday, Jimenez, Kim, Lee, E., Miley (13)

The motion passed unanimously.

8. ABAG FINANCE AND PERSONNEL COMMITTEE REPORT

Committee Chair Karen Mitchoff, Supervisor, County of Contra Costa, reported on committee activities, including the following: approval of summary minutes of meeting on November 17, 2016; report on financial reports for November 2016; report on payment of membership dues for fiscal year 2016-2017; report on contracts between \$20,000 and \$50,000; presentation on proposed new joint powers authority—ABAG Finance Authority; report and approval of a one-time contribution of \$2,500 as a challenge grant for the Patricia M. Jones Institute for Leadership Engagement and Development Scholarship Fund, managed by Hagar Services Coalition, Inc.; and a closed session—conference with labor negotiators.

President Pierce recognized a motion by Karen Mitchoff, Supervisor, County of Contra Costa, which was seconded by Cindy Chavez, Supervisor, County of Santa Clara, to approve the committee report.

There was no discussion.

There was no public comment.

The aye votes were: Andersen, Chavez, Clark, Cortese, Eklund, Elliott, Garcia, Haggerty, Hannigan, Hudson, Lee, W., Mackenzie, Mitchoff, Peralez, Pierce, Pine, Rabbitt, Ramos, Rodoni, Scharff (20)

The nay votes were: None.

Abstentions were: None.

Absent were: Arreguin, Augustine, Campbell Washington, Canepa, Diep, Gibson McElhaney, Guillen, Gupta, Halliday, Jimenez, Kim, Lee, E., Miley (13)

The motion passed unanimously.

Absent were:

The motion passed unanimously.

9. REPORT ON PRIORITY PRODUCTION AREA PROGRAM

Miriam Chion, ABAG Planning and Research Director, noted the leadership of Pradeep Gupta, Mayor, City of South San Francisco, on the Priority Production Area and Economic Prosperity programs, and reported on comments from member jurisdictions on the work of Cynthia Kroll, ABAG Chief Economist.

Cynthia Kroll, ABAG Chief Economist, noted the contribution of the Research staff, and reported on research and ongoing work on the Priority Production Area program and Economic Prosperity study.

Karen Chapple, University of California, Berkeley, presented on *The Bay Area Industrial Land and Jobs Study: Findings and Implications* and reported on research on trends in industrial land inventory, capacity of future growth, occupancy and expected demand.

Members discussed level of industrial land needed in the region and emerging jobs and technologies; emerging technology and lowering of wages; use of acreage and square footage for employment density; discussions with member transportation planning committees; preserving industrial lands, environmental impacts, and job centers; land use by jurisdiction; industrial trends; warehouse and distribution, and research and development; middle wage jobs; economic diversity; biotech industry; cost-benefit analysis; shipping cost and local talent pool; available county surplus industrial land; Priority Production Area program is not included in Plan Bay Area 2017; housing and jobs and industrial land in Alameda County.

The following individual gave public comment: Rick Auerbach, WEBAIC.

President Pierce recognized a motion by Karen Mitchoff, Supervisor, County of Contra Costa, which was seconded by Pat Eklund, Mayor, City of Novato, to direct ABAG staff to continue developing ABAG's Priority Production Areas (PPA) program. This action does not affect the recently adopted scenarios for Plan Bay Area 2040 or the associated EIR in any way. Staff is also directed to engage MTC staff and the joint MTC Planning Committee and ABAG Administrative Committee in this effort while awaiting consolidation of ABAG and MTC planning programs in anticipation of the consolidated staff implementing a version of PPA sometime after final approval of Plan Bay Area 2040.

There was no discussion.

There was no public comment.

The aye votes were: Andersen, Arreguin, Chavez, Clark, Cortese, Eklund, Elliott, Garcia, Haggerty, Hannigan, Hudson, Lee, W., Mackenzie, Mitchoff, Peralez, Pierce, Pine, Rabbitt, Ramos, Rodoni, Scharff (21)

The nay votes were: None.

Abstentions were: None.

Absent were: Augustine, Campbell Washington, Canepa, Diep, Gibson McElhaney, Guillen, Gupta, Halliday, Jimenez, Kim, Lee, E., Miley (12)

The motion passed unanimously.

10. REPORT ON ABAG/MTC OPTION 7 IMPLEMENTATION ACTION PLAN

A. REPORT ON STAFF CONSOLIDATION PLAN, CONTRACT FOR SERVICES, AND MEMORANDUM OF UNDERSTANDING

Brad Paul, ABAG Acting Executive Director, presented an updated on ABAG and MTC consolidation process, including ABAG planning, research and services; mission and priorities; programs; local collaboration programs; consolidation goals and benefits; guiding principles; agency consolidation; current process; assessing organizational issues, contract for services, memorandum of understanding, comprehensive input, negotiating; public engagement; overview of work underway; key dates for ABAG and Executive Board input.

The following individuals gave public comment: Lee Huo, ABAG Chapter, SEIU 1021; Patricia Perry, ABAG retiree; Ken Bukowski.

Members discussed providing and maintaining a calendar to allow for review and response to developments; ABAG retirement pensions; ABAG and MTC responsibilities under SB 375; Regional Housing Needs Assessment cycle; outreach to member cities and counties; maintaining influence and production of services and products; reviewing draft contract for services in February and March.

11. REPORT ON LOCAL COLLABORATION PROGRAMS—ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (ABAG FAN)

Brad Paul, ABAG Acting Executive Director, noted staff will give a presentation on ABAG FAN and a report on a proposed successor agency will be given in the future.

Michael Hurtado, Financial Services Director, ABAG Finance Authority, and Sheelagh Flanagan, Senior Advisor to ABAG Finance Authority, presented an overview of ABAG Finance Authority, including conduit financing; investments for projects and budget; eligibility for conduit financing; affordable housing, education, healthcare project financings; internal accounting controls, leadership, and name.

Josh Winters, Western Solutions, commented on ABAG FAN services pricing and efficiency.

The ABAG Executive Board entered into Closed Session at about 9:14 p.m.

12. CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Brad Paul, Acting Executive Director; Kenneth Moy, Legal Counsel; Courtney Ruby, Finance and Administrative Services Director; Marti Paschal, Assistant Director of Administrative Services

Employee organization: SEIU Local 1021

The ABAG Executive Board returned into Open Session at about 9:33 p.m.

President Pierce announced that no reportable action was taken in Closed Session.

13. ADJOURNMENT

President Pierce adjourned the meeting of the ABAG Executive Board at about 9:33 p.m.

The next regular meeting of the ABAG Executive Board will be on February 16, 2017.

Submitted:

/s/ Brad Paul, Acting Secretary-Treasurer

Date Submitted: February 3, 2017

Approved:

For information or to review audio recordings of ABAG Executive Board meetings, contact Fred Castro, Clerk of the Board, at (415) 820 7913 or FredC@abag.ca.gov.

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ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: February 7, 2017

To: ABAG Executive Board

From: Darcie Luce
Environmental Planner, San Francisco Estuary Partnership

Subject: **Authorization to Enter into New Contract with San Francisco Estuary Institute (SFEI) for the *Healthy Watersheds, Resilient Baylands* Project**

Executive Summary

In September 2016 SFEP/ABAG was awarded a grant from U.S. EPA for the *Healthy Watersheds, Resilient Baylands* project in the amount of \$1,667,683. This grant application was completed in close partnership with SFEI, which will be leading multiple components of the project.

Healthy Watersheds, Resilient Baylands: Multi-Benefit Urban Greening and Tidal Wetlands Restoration in Silicon Valley is an effort to catalyze and demonstrate how resilience to climate change can be enhanced through implementation of multi-benefit projects. Outcomes will include 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat; 2 creeks realigned to deliver sediment to a restored tidal marsh; 10 acres of tidal transition zone and seasonal wetlands; reduced risk of flooding and associated contamination to the community of Alviso; reduced PCB and mercury delivery to the Bay; reduced methylmercury production in the baylands; and reduced risk of landfill contamination to the Bay.

SFEI will be leading project partners in the creation of a science-based model of coordinated multi-benefit projects, through the development of a Multi-Benefit Urban Greening Strategy and Design Advisory Team. Partners include: SFEI, South Bay Salt Ponds Restoration Project, Santa Clara Valley Water District, City of Sunnyvale, City of East Palo Alto, Google, SF Bay Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, San Francisco Bay Joint Venture, Bay Area Ecosystems Climate Change Consortium, Bay Planning Coalition, Bay Area Flood Protection Agencies Association, Acterra, Canopy, and Peninsula Open Space Trust.

The total project cost is \$3,335,366. The total amount of federal funding expected under this grant is \$1,667,683. Match funds of approximately 50% of the project total will be provided by project partners, including \$100,000 from SFEI. ABAG and SFEP are not contributing match to this project. On October 1, 2016, SFEI entered into a Subrecipient Agreement with SFEP/ABAG for implementation of the *Healthy Watersheds, Resilient Baylands* project in the amount not to

Authorization to Enter into New Contract with San Francisco Estuary Institute

February 7, 2017

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exceed \$988,335.14. Due to the scale of the project and the short timeframe for implementation, finalizing this agreement expediently was necessary to allow SFEI to move forward with project coordination and to inform the scopes of work of other partner subrecipient agreements.

Recommended Action

The Executive Board is requested to authorize the Executive Director or designee to enter into this agreement with SFEI for *Healthy Watersheds, Resilient Baylands* project in the amount not to exceed \$988,335.14.

Attachment

SFEI Final Draft Subrecipient Agreement (signed by SFEI)

SF Bay Area Water Quality Improvement Fund - Healthy Watersheds, Resilient Baylands
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

This Subrecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency acting on behalf of the San Francisco Estuary Partnership, a program of ABAG and San Francisco Estuary Institute, a non-profit corporation.

Recitals

A. Whereas, the U. S. Environmental Protection Agency (EPA) and ABAG entered into Grant Agreement #W9-99T53101-0 (Grant Agreement) for One Million, Six Hundred Sixty-Seven Thousand, Six Hundred Eighty-Three Dollars (\$1,667,683) of federal funding for the implementation of the Healthy Watersheds, Resilient Baylands project for multi-benefit urban greening and tidal wetlands restoration in Silicon Valley, including completing the Methane Monitoring for Blue Carbon Project (Grant Project).

B. ABAG and SFEP and San Francisco Estuary Institute desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for San Francisco Estuary Institute's participation in the Grant Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and San Francisco Estuary Institute further agree as follows:

1.0 Applicable Documents

The following are attached and incorporated by this reference:

- 1.1.1 Exhibit 1 San Francisco Estuary Institute Scope of Work
- 1.1.2 Exhibit 2 Invoicing Procedure
- Exhibit 2a Insurance Requirements
- 1.1.3 Exhibit 3 Grant Agreement
- 1.1.4 Exhibit 4 Special Conditions to Grant Agreement
- 1.1.5 Exhibit 5 Standard Form LLL - Disclosure of Lobbying Activities

1.2 The Subrecipient Agreement is comprised of this Base Document and Exhibits 1 through 5, inclusive, and is the complete and exclusive statement of understanding between ABAG and San Francisco Estuary Institute, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Subrecipient Agreement.

2.0 Term of Agreement

The Subrecipient Agreement shall commence as of October 1, 2016 (Effective Date) and continue until July 31, 2020, or until terminated by the EPA pursuant to the terms of the Grant Agreement or by ABAG pursuant to the terms of this Subrecipient Agreement.

3.0 Subaward Amount

ABAG will disburse a portion of the Grant to San Francisco Estuary Institute for carrying its responsibilities as part of the Grant Project as described in Exhibit 1. **The maximum amount to be funded by the EPA and disbursed through ABAG to San Francisco Estuary Institute shall be Nine Hundred Eighty-Eight Thousand, Three Hundred Thirty-Five Dollars and Fourteen Cents (\$988,335.14) (Subaward Amount).**

4.0 ABAG Obligations

4.1 ABAG shall be the program lead and fiscal agent for the Grant Project. ABAG shall disburse Grant funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to San Francisco Estuary Institute unless and until such are authorized and disbursed from EPA to ABAG.

4.2 ABAG shall coordinate the activities of all subrecipients, including San Francisco Estuary Institute, so as to implement the Grant Project in accordance with the terms of the Grant Agreement.

4.2.1 ABAG shall promptly notify San Francisco Estuary Institute of any notices given or actions taken by the EPA if such notices or actions are likely to affect San Francisco Estuary Institute's performance, duties, obligations or funding under this Subrecipient Agreement. To the extent practicable, ABAG shall consult with San Francisco Estuary Institute in carrying out ABAG's responsibilities.

5.0 San Francisco Estuary Institute Obligations

5.1 San Francisco Estuary Institute is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. San Francisco Estuary Institute understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by San Francisco Estuary Institute as obligations of San Francisco Estuary Institute, excepting only ABAG's obligations as described in section 4.

5.1.1 Without limiting subsection 5.1, San Francisco Estuary Institute shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount, including without limitation, the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement and all applicable statutes, regulations and regulatory guidance referenced in any of the foregoing.

5.2 San Francisco Estuary Institute shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. San Francisco Estuary Institute shall carry out all tasks in accordance with the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement, and the Special Conditions in Exhibit 4.

5.3 San Francisco Estuary Institute shall not cause ABAG to be in violation of the Grant Agreement or any of its requirements whether by act or omission.

5.4 San Francisco Estuary Institute shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time.

6.0 Indemnification and Ineligible Claims

6.1 To the fullest extent allowed by law, San Francisco Estuary Institute shall defend, indemnify, save harmless and waive subrogation against ABAG and its members, officers, employees, and agents (excluding agents who are design professionals), if any, (collectively, Indemnitees), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with its performance of this Contract (collectively, Claims) for bodily injury, personal injury, property damage or any violation of Federal, State or local laws, with the exception that this section shall in no event be construed to require indemnification by San Francisco Estuary Institute to a greater extent than permitted under the public policy or laws of the State of California.

6.2 These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in Exhibit 2. Any inspection of the work by an Indemnatee is not a waiver of full compliance with these obligations. These defense and indemnification obligations shall survive the termination or expiration of the Contract for the full period of time permitted by law.

7.0 Insurance

7.1 San Francisco Estuary Institute shall comply with the Insurance Requirements set forth in Exhibit 2.

8.0 Termination

8.1 Upon termination of the Grant Agreement, this Subrecipient Agreement shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement, unless this Subrecipient Agreement is terminated sooner in accordance with its terms.

8.2 ABAG may terminate this Subrecipient Agreement upon written approval for same from EPA in accordance with the terms and conditions of such approval.

8.3 If, through any cause, San Francisco Estuary Institute fails to fulfill in timely and proper manner its obligations under the Agreement, or if San Francisco Estuary Institute shall violate any covenants, conditions, or stipulations of the Agreement, and should such failure or violation continue unremedied for a period of thirty (30) days after receipt of ABAG's written notice to San Francisco Estuary Institute specifying the details of such failure or violation, then ABAG may terminate the Agreement by giving not less than five (5) days prior written notice of such termination which specifies the effective date thereof. Upon termination under this paragraph, all unfinished or finished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by San Francisco Estuary Institute the Agreement, shall, at the option of ABAG, become ABAG's property and San Francisco Estuary Institute shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of termination. Notwithstanding the above, San Francisco Estuary Institute shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of the agreement by San Francisco Estuary Institute, and ABAG may withhold any payment to San Francisco Estuary Institute for the purpose of set-off until such time as the exact amount of damage due ABAG from San Francisco Estuary Institute is determined.

8.4 ABAG may terminate the Agreement at any time by giving not less than thirty (30) days prior written notice of termination to Consultant which shall specify the effective date thereof. Upon termination under this paragraph, all finished or unfinished documents and other materials described in paragraph 8.3 shall at the option of ABAG become its property. If the contract is terminated by ABAG as provided in this paragraph, Consultant shall be

paid for services actually performed at the rate set forth in Exhibit A; provided that, if the Agreement is terminated due to the fault of Consultant, only the paragraph relative to termination for cause shall apply.

9.0 Notices and Administrative Contacts

9.1 All notices or notifications under this Subrecipient Agreement shall be in writing addressed to the persons set forth in this section.

9.2 All notices or notifications to ABAG shall be sent to:

Darcie Luce
San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, California 94612
510-622-2448
darcie.luce@sfestuary.org

9.3 All notices or notifications to the San Francisco Estuary Institute shall be sent to:

Lawrence Leung
San Francisco Estuary Institute
4911 Central Ave.
Richmond, CA 94804
510-746-7356
lawrence@sfei.org

10.0 Amendments and Changes

This Subrecipient Agreement may be changed only by a written amendment duly signed by ABAG and San Francisco Estuary Institute.

11.0 Assignment and Delegation

San Francisco Estuary Institute shall not assign its rights or delegate its duties under this Subrecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Subrecipient Agreement.

12.0 Governing Law and Venue

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. San Francisco Estuary Institute further agrees and consents that the venue of any action brought between San Francisco Estuary Institute and ABAG shall be exclusively in the County of Alameda.

13.0 Validity and Severability

If any provision of this Subrecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Subrecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 No Waiver

No waiver by either party of any event of breach and/or breach of any provision of this Subrecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this Subrecipient Agreement shall not be construed as a waiver thereof.

15.0 Record Retention and Inspection/Audit Settlement

15.1 San Francisco Estuary Institute shall maintain accurate and complete financial records of its activities and operations relating to this Subrecipient Agreement in accordance with the RFIP and Grant Agreement and generally accepted accounting principles.

15.2 San Francisco Estuary Institute agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the San Francisco Estuary Institute and shall be made available to ABAG during the term of this Subrecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

15.3 San Francisco Estuary Institute shall deliver all materials described in subsection 15.2 and specified by ABAG to a location to be determined by ABAG. San Francisco Estuary Institute shall bear its own costs and expenses in this regard. However, San Francisco Estuary Institute shall not be responsible for the costs or expenses incurred by ABAG to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement.

15.4 If an audit of the San Francisco Estuary Institute is conducted specifically regarding this Subrecipient Agreement by any Federal auditor, or by any auditor or accountant employed by the San Francisco Estuary Institute or otherwise, then the San Francisco Estuary Institute shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this Subrecipient Agreement.

16.0 Lobbying and Litigation Prohibition

16.1 San Francisco Estuary Institute shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. San Francisco Estuary Institute shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

16.2 San Francisco Estuary Institute agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. San Francisco Estuary Institute shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that sub-subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any subrecipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

16.3 If applicable, San Francisco Estuary Institute shall complete and submit Exhibit 5, Standard Form LLL - Disclosure of Lobbying Activities.

17.0 Authorization Warranty

San Francisco Estuary Institute represents and warrants that the person executing this Subrecipient Agreement on its behalf is an authorized agent who has actual authority to

bind San Francisco Estuary Institute to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

National Estuary Program-San Francisco Estuary Program
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, San Francisco Estuary Institute has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

DUNS No. 187018866

San Francisco Estuary Institute

Warner Chabot, Executive Director

Association of Bay Area Governments

Brad Paul, Executive Director

Approved as to form:

Kenneth K. Moy, Legal Counsel

Exhibit 1

U.S. EPA Grant Agreement #W9-99T53101-0
San Francisco Estuary Institute
Healthy Watersheds, Resilient Baylands Project for Multi-Benefit Urban Greening and Tidal
Wetlands Restoration in Silicon Valley
Scope of Work

This project will develop essential science-based tools that allow planners to integrate wetland restoration and water quality improvements, demonstrate the effectiveness of the tools in major implementation projects in the Silicon Valley and South Bay, and transfer information to local practitioners for incorporation into an array of implementation plans and programs. Outcomes will include up to 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, the development of a Multi-Benefit Urban Greening Strategy, development of a Sediment Strategy, and update of the SediMatch website.

Task 1. Multi-Benefit Urban Greening Strategy

Partner with Grassroots Ecology and Peninsula Open Space Trust to develop a Multi-Benefit Urban Greening Strategy for increasing ecological function in the Santa Clara Valley through coordinated greening efforts, including LID. The Urban Greening Strategy will include an assessment of the potential of urban greening to provide specific ecological benefits, general approaches for achieving these benefits, and design opportunities and strategies to create wetlands, riparian habitat, habitat connectivity, and other ecological functions as part of implementation projects. Recruit and convene a Design Advisory Team to provide input and guidance to the Strategy.

Deliverable(s):

- | | |
|---|----------------------|
| 1.1: Convene Design Advisory Team (meeting summary) | <i>July 31, 2017</i> |
| 1.2: Multi-Benefit Urban Greening Strategy (report) | <i>Nov 30, 2018</i> |

Budget: \$142,550

Match: \$25,000

Task 2. Integrate Water Quality and Ecological Benefits

Build links between stormwater management and urban ecological improvements. Analyze how additional, complementary urban greening activities beyond traditional engineered LID types, particularly urban tree canopy, can be expanded and improved to increase rainfall interception and therefore the effectiveness of natural soil and engineered LID installations in treating stormwater runoff. Evaluate how these hydrological benefits might be quantified and maximized in the landscape, using GreenPlan-IT and/or other tools. Investigate how selected ecological benefits of urban greening efforts can be integrated into technical approaches such as the GreenPlan-IT toolkit or post application analysis to provide a more integrated framework for evaluating multiple benefits concurrently. The task will be focused on the City of Sunnyvale as a case study.

Deliverable(s):

- 2.1: Demonstration analysis of hydrological benefits from non-engineered urban greening activities with recommendations for incorporation into LID analysis

2.2: Recommended technical approach for incorporating ecological information into analysis of LID benefits

Sept 30, 2019

Sept 30, 2019

Budget: \$142,550
Match: \$25,000

Task 3. Urban Greening Implementation – East Palo Alto

Develop information to support Canopy and Grassroots Ecology in their work to plan and install vibrant tree ecosystems in East Palo Alto schools, parks, and neighborhoods. Create and analyze relevant Santa Clara Valley datasets on past and present conditions to inform tree-planting decisions in East Palo Alto. Meet with Canopy, Grassroots Ecology, and City of East Palo Alto to identify technical questions and needs, and transfer information.

Deliverable(s):

3.1: Selected data to inform tree-planting decisions in East Palo Alto. *August 31, 2019*

3.2: Three meetings with East Palo Alto partner organizations (Meeting Summaries)

June 30, 2020

Budget: \$33,300

Task 4. Design Advisory Team Meetings, Project Design Guidance, and Urban Greening Implementation - Google

Work with the City of Sunnyvale, City of East Palo Alto, Google, Canopy, and Grassroots Ecology to identify priority locations for near-term implementation, and to develop projects that demonstrate how standard LID installations can be modified and integrated with other urban greening efforts to achieve multiple benefits. Work with team members and selected outside experts to provide specific planning guidance (including appropriate native plant species assemblages, soils and grading, maintenance, and other parameters). The Design Advisory Team, which will include expertise in landscape and urban design, ecology, permitting, and construction, will help develop innovative yet implementable projects by participating in small group meetings, assigned tasks, and review of products.

SFEI will coordinate Google's collaboration with the Healthy Watersheds, Resilient Baylands team to maximize the ecological and hydrological benefits of four new projects, implementing selected elements of the Multi-Benefit Urban Greening Strategy (e.g., pavement removal, LID buildout, habitat creation) at four Google campus sites in the Sunnyvale-Mountain View bayshore area. SFEI will provide final deliverables for these projects.

Deliverable(s):

4.1: Final designs for four projects at Google campus sites

August 31, 2019

4.2: Summaries from 4-6 meetings

June 30, 2020

4.3: Before-and-after photo documentation of four projects

June 30, 2020

Budget: \$71,300

Task 5. Sediment Strategy to inform decision-making for the resilience of San Francisco Bay wetlands and water quality

Develop a strategy that will inform ongoing efforts to manage and monitor sediment and support decisions about how to improve the resilience of tidal wetlands and bay water quality. The Sediment Strategy will build on the EPA-funded Flood Control 2.0 project and synthesize the work of local, state, and federal agencies (e.g., Bay Conservation Development Commission (BCDC), USGS, USACE, and RMP) to address critical questions identified in the Baylands Goals Science Update and the 2015 BCDC Sediment Science Workshop. The Sediment Strategy will use the best available science to provide: (1) a sediment supply and demand assessment for the baylands and Bay taking into account different climate change and management/restoration scenarios; (2) a regional map indicating the relative resilience of baylands over the long term; (3) guidelines for sediment management approaches, based on supply/demand and key trade-offs; and (4) a sediment monitoring strategy to inform management decisions focused on sediment fluxes to the Bay.

Deliverable(s):

- 5.1: Meeting summary from 1-2 Sediment Strategy science workshop(s) *June 30, 2018*
- 5.2: Sediment Strategy final report *June 30, 2019*

Budget: \$237,550
Match: \$50,000

Task 6. Design Advisory Team and Vision Workshop

Create a science-based conceptual design for the Pond A8-Calabazas-STA complex. Convene an expert Design Advisory Team and, with facilitation by the Bay Area Ecosystems Climate Change Consortium (BAECCC), lead a Vision Workshop, joining local flood control and land managers with regional science expertise. Based on the workshop and supporting analyses, produce a Resilient Landscape Vision for the site.

Deliverable(s):

- 6.1: Vision workshop (meeting summary) *July 31, 2017*
- 6.2: Resilient landscape vision report for Pond A8/Calabazas-STA complex *May 30, 2018*

Budget: \$109,300

Task 7. Information Transfer and Project Management

Information transfer includes Annual Full Team Meetings, workshops sponsored by Bay Area Flood Protection Agencies Association (BAFPAA) and Bay Planning Coalition (BPC), and selected other outreach meetings and communication to disseminate project approach and

findings. This task also includes developing a consolidated QAPP. Information transfer activities will be summarized in progress reports

SFEI staff will also provide general project administration including project workflow, contract management, invoicing, and project coordination. SFEI will submit progress reports to the SFEP Project Manager as described in Exhibit 2.

SFEI staff will also produce a brief summary report of project activities over the project period, documenting the incorporation of ecological and water quality benefits into the implementation of the project. The report will also include expected achievement of short-term outcomes, and any expected long-term multi-benefit outcomes, including any obstacles encountered and resulting adjustments to the project.

Deliverable(s):

7.1: Summaries from 4 Annual full team meetings	<i>Annually on July 31</i>
7.2: BPC-sponsored workshop summary	<i>Sept 30, 2018</i>
7.3: BAFPAA-sponsored workshop summary	<i>Sept 30, 2019</i>
7.4: Targeted outreach presentations (5-10)	<i>June 30, 2020</i>
7.5: Consolidated QAPP	<i>Sept 30, 2018</i>
7.6: Monthly invoices and progress reports	<i>10th of following month</i>
7.7: Final Project Report	<i>July 31, 2020</i>

Budget: \$109,285.14

Task 8. Implementation Project Tracking and Visualization Tool

To document and disseminate the products and outcomes of *Healthy Watersheds, Resilient Baylands*, SFEI's Environmental Informatics team will develop a public-friendly, interactive website recording the as-built extent of each project component (e.g. wetland, bioretention area, canopy tree), relevant specifications, and projected environmental performance metrics of each public and private implementation project. Projected performance will be reported in terms of ecological functions and hydrological quantification identified in the analyses of the Multi-Benefit Urban Greening Strategy. Include readily accessible charts and graphs, communicating specific measures of progress, as well as project descriptions and before-and-after photo documentation, all of which will demonstrate the progressive implementation of the overall Multi-Benefit Urban Greening Strategy.

Deliverable:

8.1: Website for visualizing multi-benefit projects	<i>Sept 30, 2019</i>
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Budget: \$95,000

Task 9. SediMatch Phase 2 Website

Work with the San Francisco Bay Joint venture to advance Phase 2 of SediMatch. Provide additional functionality requested by users during the initial development and testing of the

web tool, including user authentication and editing abilities, advanced filtering and data download, file upload, link to EcoAtlas, and training/support.

Deliverable:

9.1: Enhanced SediMatch website

Feb 1, 2018

Budget: \$47,500

Subaward Deliverables Table

Task #	Partners	Deliverable #	Deliverable	Deadline
Task 1	Grassroots Ecology, SFEP, POST	1.1	Convene Design Advisory Team (meeting summary)	7/31/2017
		1.2	Multi-Benefit Urban Greening Strategy Report	11/30/2018
Task 2	Google	2.1	Demonstration analysis of benefits with recommendations	9/30/2019
		2.2	Recommended technical approach	9/30/2019
Task 3	Grassroots Ecology, Canopy, City of East Palo Alto	3.1	Selected data to inform tree-planting decisions	8/31/2019
		3.2	Meeting summaries from three East Palo Alto meetings	6/30/2020
Task 4	City of Sunnyvale, City of East Palo Alto, Google, Canopy, Grassroots Ecology	4.1	Final designs from four projects at Google campus sites	8/31/2019
		4.2	Summaries from 4-6 meetings	6/30/2020
		4.3	Before-and-after photo documentation of 4 projects	6/30/2020
Task 5	SFEP, RMP	5.1	Meeting summary from 1-2 Sediment Strategy science workshops	6/30/2018
		5.2	Sediment Strategy final report	6/30/2019
Task 6	BAECCC	6.1	Meeting summary from Vision workshop	7/31/2017
		6.2	Resilient landscape vision report for Pond A8/Calabazas-STA	5/30/2018
Task 7	BPC, BAFPAA	7.1	Summaries from 4 annual full team meetings	Annually on 7/31
		7.2	BPC-sponsored workshop summary	9/30/2018
		7.3	BAFPAA-sponsored workshop summary	9/30/2019
		7.4	Targeted outreach presentations (5-10)	6/30/2020
		7.5	Consolidated QAPP	9/30/2018
		7.6	Monthly invoices and progress reports	10 th of following month
		7.7	Final Project Report	7/31/2020
Task 8		8.1	Website for visualizing multi-benefit projects	9/30/2019
Task 9	SFBayJV	9.1	Enhanced SediMatch website	2/1/2018

Subaward Budget Table

San Francisco Estuary Institute					
Task	Description	Grant Amount	Match	Source of Match	Total
1	Multi-Benefit Urban Greening Strategy	\$142,550.00	\$25,000.00	POST/SFEI	\$167,550.00
2	Integrate Water Quality and Ecological Benefits	\$142,550.00	\$25,000.00	SFEI	\$167,550.00
3	Urban Greening Implementation - East Palo Alto	\$33,300.00	\$0.00		\$33,300.00
4	Design Advisory Teams, Project Design Guidance, and Urban Greening Implementation - Google	\$71,300.00	\$0.00		\$71,300.00
5	Sediment Strategy	\$237,550.00	\$50,000.00	RMP/SFEI	\$287,550.00
6	Design Advisory Team and Vision Workshop	\$109,300.00	\$0.00		\$109,300.00
7	Information Transfer and Project Management	\$109,285.14	\$0.00		\$109,285.14
8	Implementation Project Tracking and Visualization Tool	\$95,000.00	\$0.00		\$95,000.00
9	SediMatch Phase 2 Website	\$47,500.00	\$0.00		\$47,500.00
TOTAL		\$ 988,335.14	\$100,000.00		\$1,088,335.14

EXHIBIT 2

Invoicing Procedure

A. Subrecipient Responsibilities:

1. Subrecipient will prepare and submit to ABAG/SFEP an invoice for approval, no more frequently than one per month, to cover the services provided during the prior service period. Invoice must include a brief progress report, providing a summary of work performed under the tasks described in the Scope of Work that are being invoiced for that period. Progress reports should include a discussion of the activities conducted during the service period and progress towards milestones, problems encountered and their resolution, and activities planned for the next service period. In addition, progress reports should provide a financial accounting of costs incurred during the service period and cumulative project costs by subtask.
2. Direct labor: Invoice must itemize names of staff, number of hours worked, and hourly billing rates for each task showing individual calculations and total for each task.
3. Subrecipient can only bill for actual expenses incurred at the subrecipient's actual direct labor rates, fringe benefit rates, and indirect cost rates, not to exceed the task budgets specified in the budget included in Exhibit 1.
3. Consultant or Vendor Costs: Invoice must include consultant or vendor labor costs, fringe benefit cost, and indirect costs described for the monthly service period in the same manner as the subrecipient costs described above. The actual consultant or vendor invoice must be submitted to document the charges included on the subrecipient invoice.
4. Other Direct Costs (direct project expenses) are to be invoiced at cost with supporting documentation. Backup documentation must include copies of all receipts necessary to document the charges. No costs should exceed the budgeted limits delineated in the task budget without a contract amendment. No ineligible costs (such as entertainment, etc.) are allowed. Mileage will be paid at the current federal reimbursement rate (for example, the 2017 rate is 53.5 cents/mile).
5. Subrecipient invoices must summarize total contract budget, amount expended in the invoice period, and contract balance.
6. Management Fees or similar charges (mark-ups) in excess of the direct costs and approved indirect rates are not allowable. This refers to any mark-up added to any direct project costs including consultant or vendor costs or other direct costs.
7. Match Costs: Subrecipient is responsible for the match share cost identified in budget included in Exhibit 1. Match funds should be reported in the monthly invoices in the same manner as the direct project costs described above including backup documentation detailing the source of the match (actual cash and/or in-kind services). Subrecipient invoices should detail match budget, match expended in the invoice period and amount remaining.
8. Electronic copies of complete invoices signed by the subrecipient contract manager including all backup documentation may be submitted in lieu of hard copy to Darcie Luce, Project Manager at darcie.luce@sfestuary.org.

B. ABAG/SFEP Responsibilities:

1. The ABAG/SFEP Project Manager or designee will review the submitted invoice for completeness, verify math figures, ensure the task budget is not exceeded and prepare a check requisition for approval by the SFEP Executive Director for submittal to ABAG accounts receivable.
2. ABAG accounts receivable will enter the invoice into the ABAG financial accounting system and bill the funding agency U.S. EPA monthly following completion of the prior month financial statements.
3. ABAG will pay invoices within 14 days of receipt of funds from the U.S. EPA.

4. Budget Reallocations:

- a. All task budget reallocations and/or increases must be approved in advance by the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- b. The budget reallocation, if any, cannot substantially change the scope of work without approval from the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- c. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories not to exceed the total contract amount.

Exhibit 2a

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Insurance Requirements

San Francisco Estuary Institute shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of 5 years following the completion of this project. In the event San Francisco Estuary Institute fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by San Francisco Estuary Institute. The limits of Insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the San Francisco Estuary Institute's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. San Francisco Estuary Institute shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its members, officers or employees (Indemnitees); or the San Francisco Estuary Institute shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR)

provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of San Francisco Estuary Institute; completed operations; or automobiles owned, leased, hired or borrowed by San Francisco Estuary Institute.

(ii) For any claims related to this project, the San Francisco Estuary Institute's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of San Francisco Estuary Institute's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, San Francisco Estuary Institute shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or San Francisco Estuary Institute.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. San Francisco Estuary Institute shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.


Contractors and Lower Tier Subcontractors

San Francisco Estuary Institute shall to include the same requirements and provisions of this Attachment, including the section, with any contractor to the extent they apply to the scope of the contractor's work. Any contractor further agrees to include the same requirements and provisions of this Attachment, including the section, with any lower tier subcontractor to the extent they apply to the scope of the lower tier subcontractor's work. San Francisco Estuary Institute will give a copy of this Attachment to any contractor, or lower tier subcontractor upon request.

Exhibit 3
 U.S. EPA Grant Agreement #W9-99T53101-0
 Subrecipient Agreement

Grant Agreement

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 99T53101 MODIFICATION NUMBER: 0 PROGRAM CODE: W9	DATE OF AWARD 09/27/2016
		TYPE OF ACTION New PAYMENT METHOD: ASAP	MAILING DATE 10/04/2016 ACH# 90017
RECIPIENT TYPE: Intermunicipal		Send Payment Request to: Las Vegas Finance Center email: lyfc-grants@epa.gov	
RECIPIENT: Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604 EIN: 94-2832478		PAYEE: Executive Director Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604	
PROJECT MANAGER Caitlin Sweeney P.O. Box 2050 Oakland, CA 94604 E-Mail: caitlin.sweeney@estuary.org Phone: 510-622-2362	EPA PROJECT OFFICER Luisa Valletta 75 Hawthorne Street, WTR-3 San Francisco, CA 94105 E-Mail: Valletta.Luisa@epa.gov Phone: 415-972-3400	EPA GRANT SPECIALIST Maria Roviero Grants Management Section, EMD-6-1 E-Mail: roviero.maria@epa.gov Phone: 415-972-3573	
PROJECT TITLE AND DESCRIPTION San Francisco Bay Area Water Quality Improvement Fund This agreement provides federal funding in the amount of \$1,667,683 to create 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat; realign 2 creeks to deliver an estimated ~50,000 cubic yards/year of sediment to restored tidal marsh, reducing maintenance costs and increasing permitting efficiency; create 10 acres of tidal transition zone and seasonal wetlands; reduce risk of flooding and associated contamination to the community of Alviso; reduce PCB and mercury delivery to the Bay; reduce methylmercury production in the baysands; and reduce risk of landfill contamination to the Bay.			
BUDGET PERIOD 10/01/2016 - 09/30/2020	PROJECT PERIOD 10/01/2016 - 09/30/2020	TOTAL BUDGET PERIOD COST \$3,335,366.00	TOTAL PROJECT PERIOD COST \$3,335,366.00
NOTICE OF AWARD			
Based on your Application dated 08/17/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,667,683. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,667,683. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Water Division 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Craig A. Wills - Grants Management Officer			DATE 09/27/2016

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,667,683	\$ 1,667,683
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 1,567,683	\$ 1,567,683
Other Contribution	\$	\$ 100,000	\$ 100,000
Allowable Project Cost	\$ 0	\$ 3,335,366	\$ 3,335,366

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
06.126 - San Francisco Bay Water Quality Improvement Fund	Clean Water Act: Sec. 320	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1609W22024	1617	B	09LE	202BK4	4158			1,667,683
									1,667,683

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$97,895
2. Fringe Benefits	\$62,247
3. Travel	\$2,000
4. Equipment	\$0
5. Supplies	\$2,025
6. Contractual	\$3,159,768
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$3,323,935
10. Indirect Costs: % Base <u>various rates apply</u>	\$11,431
11. Total (Share: Recipient <u>50.00</u> % Federal <u>50.00</u> %.)	\$3,335,366
12. Total Approved Assistance Amount	\$1,667,683
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,667,683
15. Total EPA Amount Awarded To Date	\$1,667,683

Administrative Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Annual Federal Financial Report (FFR) - SF 425

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to lvfc-grants@epa.gov no later than **December 30** of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

C. Six Good Faith Efforts 40 CFR Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

D. Utilization of Disadvantaged Business Enterprises

General Compliance, 40 CFR Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

Fair Share Objectives, 40 CFR Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the [California State Water Resources Control Board \(CSWRCB\)](#), as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as [CSWRCB](#),

Negotiating Fair Share Objectives/Goals, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of

another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at Ochab.Joe@epa.gov, within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Contract Administration Provisions, 40 CFR Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

Bidders List, 40 CFR Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

E. MBE/WBE Reporting

General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the GrantsRegion9@epa.gov a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to GrantsRegion9@epa.gov . The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm .

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

F. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with the Cost Principles under 2 CFR Part 200, Subpart E. For proposal preparation, the recipient may use the appropriate completeness checklist located at: <http://www.aqd.nbc.gov/services/ICS.aspx>

The local government recipient whose cognizant federal agency has been designated by the Office of Management and Budget (OMB) must develop and submit its indirect cost rate proposal to its cognizant agency within six (6) months after the close of the governmental unit's fiscal year. If the cognizant federal agency has not been identified by the OMB, the local government recipient must still develop (and when required, submit) its proposal within that period.

The interstate agency recipient must send its proposal to its cognizant federal agency within six (6) months after the end of its fiscal year. If EPA is the cognizant federal agency of the interstate agency, local government, or special district, the recipient must send its indirect cost rate proposal within six (6) months after the end of its fiscal year to:

Regular Mail

Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: OGD Indirect Cost Rate Proposal Control Desk

Mail Courier (e.g. FedEx, UPS, etc.)

Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 5th floor
Washington, DC 20004
Attn: OGD Indirect Cost Rate Proposal Control Desk

Electronic submissions of proposals may be sent via email to OGD_IndirectCost@epa.gov.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or

regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients may draw down grant funds once a rate has been approved, but only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired.

Recipients with differences between provisional and final rates are not entitled to more than the award amount. Recipients may request EPA approval to rebudget funds from direct cost categories to the indirect cost category (to grants which have not expired or been closed out) to cover increased indirect costs.

The recipient agrees to comply with the audit requirements prescribed in 2 CFR Part 200, Subpart F, Audits of States, Local Governments, and Non-Profit Organizations.

G. Non-Federal Third-Party Contributions

This award includes \$1,667,683 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

a. Reporting

The recipient shall submit quarterly progress reports to the EPA Project Officer within 30 calendar days after the end of each Federal fiscal quarter (January 30, April 30, July 30, and October 30). These reports should include a discussion of the activities conducted during the quarter and progress towards milestones, problems encountered and their resolution, and activities planned for the next quarter. In addition, quarterly reports should identify any special EPA assistance needed, as well as provide a financial accounting of costs incurred during the quarter and cumulative project costs by task. The progress reports should include:

- a discussion of the activities conducted during the quarter (including a comparison of actual accomplishments with the anticipated outputs and outcomes specified in the workplan),
 - progress towards milestones,
 - problems encountered with achieving outputs and outcomes, and their resolution,
 - activities planned for the next quarter,
 - a financial accounting of costs incurred during the reporting period, and
 - cumulative project costs (EPA and match amounts) since the beginning of the project, by task.
- identification of any special EPA assistance needed, and an explanation of any cost overruns. The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

Within 90 days of the end of the project period, the recipient must submit 1 hardcopy of the final report, documenting project activities over the entire project period and the

recipient's achievements with respect to the project's purposes and objectives. The final report must also be submitted electronically (by Email) to the EPA Project Officer.

b. QAPP

This grant includes the performance of environmental measurements, therefore, a QA Plan or Sampling and Analysis Plan must be prepared. The recipient should consult with the Region 9 Quality Assurance Office to determine what type of QA documentation would be most appropriate and what QA guidance should be followed. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415-972-3411.

c. Grant Source Recognition

The recipient should publicly acknowledge the US EPA San Francisco Bay Water Quality Improvement Fund as the funding vehicle for the projects when the grantee is asked by public entities, federal agencies or state and local agencies about the projects and on-going results.

d. Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

e. Cybersecurity

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees

to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

END OF DOCUMENT

Exhibit 4

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Special Conditions

A. Nondiscrimination. San Francisco Estuary Institute shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. San Francisco Estuary Institute shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by San Francisco Estuary Institute to carry out these requirements is a material breach of the Agreement which may result in the termination of the Agreement or other legally available remedies.

B. Prompt Payment. San Francisco Estuary Institute must pay any contractors or subcontractor for satisfactory performance no more than 30 days from San Francisco Estuary Institute's receipt of payment from ABAG.

C. DBE Contractor/Subcontractor. ABAG must be notified in writing by San Francisco Estuary Institute prior to any termination of a DBE subcontractor for convenience by San Francisco Estuary Institute.

If a DBE contractor or subcontractor to San Francisco Estuary Institute fails to complete work under the subcontract for any reason, San Francisco Estuary Institute must employ the six good faith efforts described in 40 CFR §33.301 if soliciting a replacement subcontractor even if San Francisco Estuary Institute has achieved its fair share objectives under 40 CFR Part 33, subpart D.

If applicable, San Francisco Estuary Institute must provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors and have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. San Francisco Estuary Institute must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package. San Francisco Estuary Institute must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package. Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

San Francisco Estuary Institute must maintain all records documenting its compliance with the requirements of 40 CFR Part 33, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the Grant Agreement.

D. Clean Air Act and the Federal Water Pollution Control Act. San Francisco Estuary Institute shall comply with all applicable standards, orders or regulations issued pursuant to

the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of EPA.

Exhibit 5

U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Standard Form LLL-Disclosure of Lobbying Activities

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

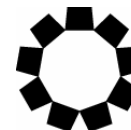
Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: February 7, 2017

To: ABAG Executive Board

From: Darcie Luce
Environmental Planner, San Francisco Estuary Partnership

Subject: **Authorization to Enter into New Contract with Grassroots Ecology for the *Healthy Watersheds, Resilient Baylands* Project**

Executive Summary

In September 2016 SFEP/ABAG was awarded a grant from U.S. EPA for the *Healthy Watersheds, Resilient Baylands* project in the amount of \$1,667,683. This grant application was completed in close partnership with SFEI, which will be leading multiple components of the project.

Healthy Watersheds, Resilient Baylands: Multi-Benefit Urban Greening and Tidal Wetlands Restoration in Silicon Valley is an effort to catalyze and demonstrate how resilience to climate change can be enhanced through implementation of multi-benefit projects. Outcomes will include 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat; two creeks realigned to deliver sediment to a restored tidal marsh; 10 acres of tidal transition zone and seasonal wetlands; reduced risk of flooding and associated contamination to the community of Alviso; reduced PCB and mercury delivery to the Bay; reduced methylmercury production in the baylands; and reduced risk of landfill contamination to the Bay.

Through this grant, Grassroots Ecology will work with San Francisco Estuary Partnership (SFEP), San Francisco Estuary Institute (SFEI), Canopy, Peninsula Open Space Trust (POST), and other partners to plan and install urban greening projects in East Palo Alto schools, parks, and neighborhoods. These activities will be informed by the development of the Multi-Benefit Urban Greening Strategy and are intended to produce three acres of native riparian trees (live oak, valley oak, sycamore, willow, or other similar native trees) in urban greening projects; riparian functions and habitat connectivity over three acres provided for native birds, bats, and insects; reduced runoff by over 400,000 gallons per year from increased tree canopy; and decreased stormwater runoff to the Bay through canopy interception.

The total project cost is \$3,335,366. The total amount of federal funding expected under this grant is \$1,667,683. Match funds of approximately 50% of the project total will be provided by project partners. ABAG and SFEP are not contributing match to this project.

Authorization to Enter into New Contract with Grassroots Ecology

February 7, 2017

Page 2

Recommended Action

The Executive Board is requested to authorize the Executive Director or designee to enter into a new Subrecipient Agreement with the Grassroots Ecology for the *Healthy Watersheds, Resilient Baylands* Project in the amount not to exceed \$52,250.

Attachment

Grassroots Ecology Draft Subrecipient Agreement

SF Bay Area Water Quality Improvement Fund - Healthy Watersheds, Resilient Baylands
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

This Subrecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency acting on behalf of the San Francisco Estuary Partnership, a program of ABAG and Grassroots Ecology, a fiscally-sponsored project of Acterra, a nonprofit corporation.

Recitals

A. Whereas, the U. S. Environmental Protection Agency (EPA) and ABAG entered into Grant Agreement #W9-99T53101-0 (Grant Agreement) for One Million, Six Hundred Sixty-Seven Thousand, Six Hundred Eighty-Three Dollars (\$1,667,683) of federal funding for the implementation of the Healthy Watersheds, Resilient Baylands project for multi-benefit urban greening and tidal wetlands restoration in Silicon Valley, including completing the Methane Monitoring for Blue Carbon Project (Grant Project).

B. ABAG and SFEP and Grassroots Ecology desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for Grassroots Ecology's participation in the Grant Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and Grassroots Ecology further agree as follows:

1.0 Applicable Documents

The following are attached and incorporated by this reference:

- 1.1.1 Exhibit 1 Grassroots Ecology Scope of Work
- 1.1.2 Exhibit 2 Invoicing Procedure
- Exhibit 2a Insurance Requirements
- 1.1.3 Exhibit 3 Grant Agreement
- 1.1.4 Exhibit 4 Special Conditions to Grant Agreement
- 1.1.5 Exhibit 5 Standard Form LLL - Disclosure of Lobbying Activities

1.2 The Subrecipient Agreement is comprised of this Base Document and Exhibits 1 through 5, inclusive, and is the complete and exclusive statement of understanding between ABAG and Grassroots Ecology, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Subrecipient Agreement.

2.0 Term of Agreement

The Subrecipient Agreement shall commence as of January 1, 2017 (Effective Date) and continue until July 31, 2020, or until terminated by the EPA pursuant to the terms of the Grant Agreement or by ABAG pursuant to the terms of this Subrecipient Agreement.

3.0 Subaward Amount

ABAG will disburse a portion of the Grant to Grassroots Ecology for carrying its responsibilities as part of the Grant Project as described in Exhibit 1. **The maximum amount to be funded by the EPA and disbursed through ABAG to Grassroots Ecology shall be Fifty-two Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$52,250.00) (Subaward Amount).**

4.0 ABAG Obligations

4.1 ABAG shall be the program lead and fiscal agent for the Grant Project. ABAG shall disburse Grant funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to Grassroots Ecology unless and until such are authorized and disbursed from EPA to ABAG.

4.2 ABAG shall coordinate the activities of all subrecipients, including Grassroots Ecology, so as to implement the Grant Project in accordance with the terms of the Grant Agreement.

4.2.1 ABAG shall promptly notify Grassroots Ecology of any notices given or actions taken by the EPA if such notices or actions are likely to affect Grassroots Ecology's performance, duties, obligations or funding under this Subrecipient Agreement. To the extent practicable, ABAG shall consult with Grassroots Ecology in carrying out ABAG's responsibilities.

5.0 Grassroots Ecology Obligations

5.1 Grassroots Ecology is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. Grassroots Ecology understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by Grassroots Ecology as obligations of Grassroots Ecology, excepting only ABAG's obligations as described in section 4.

5.1.1 Without limiting subsection 5.1, Grassroots Ecology shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount, including without limitation, the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement and all applicable statutes, regulations and regulatory guidance referenced in any of the foregoing.

5.2 Grassroots Ecology shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. Grassroots Ecology shall carry out all tasks in accordance with the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement, and the Special Conditions in Exhibit 4.

5.3 Grassroots Ecology shall not cause ABAG to be in violation of the Grant Agreement or any of its requirements whether by act or omission.

5.4 Grassroots Ecology shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time.

6.0 Indemnification and Ineligible Claims

6.1 To the fullest extent allowed by law, Grassroots Ecology shall defend, indemnify, save harmless and waive subrogation against ABAG and its members, officers, employees,

and agents (excluding agents who are design professionals), if any, (collectively, Indemnitees), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with its performance of this Contract (collectively, Claims) for bodily injury, personal injury, property damage or any violation of Federal, State or local laws, with the exception that this section shall in no event be construed to require indemnification by Grassroots Ecology to a greater extent than permitted under the public policy or laws of the State of California.

6.2 These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in Exhibit 2. Any inspection of the work by an Indemnitee is not a waiver of full compliance with these obligations. These defense and indemnification obligations shall survive the termination or expiration of the Contract for the full period of time permitted by law.

7.0 Insurance

7.1 Grassroots Ecology shall comply with the Insurance Requirements set forth in Exhibit 2.

8.0 Termination

8.1 Upon termination of the Grant Agreement, this Subrecipient Agreement shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement, unless this Subrecipient Agreement is terminated sooner in accordance with its terms.

8.2 ABAG may terminate this Subrecipient Agreement upon written approval for same from EPA in accordance with the terms and conditions of such approval.

8.3 If, through any cause, Grassroots Ecology fails to fulfill in timely and proper manner its obligations under the Agreement, or if Grassroots Ecology shall violate any covenants, conditions, or stipulations of the Agreement, and should such failure or violation continue unremedied for a period of thirty (30) days after receipt of ABAG's written notice to Grassroots Ecology specifying the details of such failure or violation, then ABAG may terminate the Agreement by giving not less than five (5) days prior written notice of such termination which specifies the effective date thereof. Upon termination under this paragraph, all unfinished or finished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Grassroots Ecology the Agreement, shall, at the option of ABAG, become ABAG's property and Grassroots Ecology shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of termination. Notwithstanding the above, Grassroots Ecology shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of the agreement by Grassroots Ecology, and ABAG may withhold any payment to Grassroots Ecology for the purpose of set-off until such time as the exact amount of damage due ABAG from Grassroots Ecology is determined.

8.4 ABAG may terminate the Agreement at any time by giving not less than thirty (30) days prior written notice of termination to Consultant which shall specify the effective date thereof. Upon termination under this paragraph, all finished or unfinished documents and other materials described in paragraph 8.3 shall at the option of ABAG become its property. If the contract is terminated by ABAG as provided in this paragraph, Consultant shall be paid for services actually performed at the rate set forth in Exhibit A; provided that, if the Agreement is terminated due to the fault of Consultant, only the paragraph relative to termination for cause shall apply.

9.0 Notices and Administrative Contacts

9.1 All notices or notifications under this Subrecipient Agreement shall be in writing addressed to the persons set forth in this section.

9.2 All notices or notifications to ABAG shall be sent to:

Darcie Luce
San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, California 94612
510-622-2448
darcie.luce@sfestuary.org

9.3 All notices or notifications to the Grassroots Ecology shall be sent to:

Junko Bryant
Grassroots Ecology
3921 East Bayshore Road
Palo Alto, CA 94303
650-419-9880
junko@grassrootsecology.org

10.0 Amendments and Changes

This Subrecipient Agreement may be changed only by a written amendment duly signed by ABAG and Grassroots Ecology.

11.0 Assignment and Delegation

Grassroots Ecology shall not assign its rights or delegate its duties under this Subrecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Subrecipient Agreement.

12.0 Governing Law and Venue

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. Grassroots Ecology further agrees and consents that the venue of any action brought between Grassroots Ecology and ABAG shall be exclusively in the County of Alameda.

13.0 Validity and Severability

If any provision of this Subrecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Subrecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 No Waiver

No waiver by either party of any event of breach and/or breach of any provision of this Subrecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this Subrecipient Agreement shall not be construed as a waiver thereof.

15.0 Record Retention and Inspection/Audit Settlement

15.1 Grassroots Ecology shall maintain accurate and complete financial records of its activities and operations relating to this Subrecipient Agreement in accordance with the RFIP and Grant Agreement and generally accepted accounting principles.

15.2 Grassroots Ecology agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by Grassroots Ecology and shall be made available to ABAG during the term of this Subrecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

15.3 Grassroots Ecology shall deliver all materials described in subsection 15.2 and specified by ABAG to a location to be determined by ABAG. Grassroots Ecology shall bear its own costs and expenses in this regard. However, Grassroots Ecology shall not be responsible for the costs or expenses incurred by ABAG to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement.

15.4 If an audit of Grassroots Ecology is conducted specifically regarding this Subrecipient Agreement by any Federal auditor, or by any auditor or accountant employed by Grassroots Ecology or otherwise, then Grassroots Ecology shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this Subrecipient Agreement.

16.0 Lobbying and Litigation Prohibition

16.1 Grassroots Ecology shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Grassroots Ecology shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

16.2 Grassroots Ecology agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. Grassroots Ecology shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that sub-subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any subrecipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

16.3 If applicable, Grassroots Ecology shall complete and submit Exhibit 5, Standard Form LLL - Disclosure of Lobbying Activities.

17.0 Authorization Warranty

Grassroots Ecology represents and warrants that the person executing this Subrecipient Agreement on its behalf is an authorized agent who has actual authority to bind Grassroots Ecology to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

National Estuary Program-San Francisco Estuary Program
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, Grassroots Ecology has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

DUNS No. 121365670

Grassroots Ecology

Alexandra Von Feldt, Executive Director

Association of Bay Area Governments

Brad Paul, Executive Director

Approved as to form:

Kenneth K. Moy, Legal Counsel

Exhibit 1

U.S. EPA Grant Agreement #W9-99T53101-0

Grassroots Ecology

Healthy Watersheds, Resilient Baylands Project for Multi-Benefit Urban Greening and Tidal Wetlands Restoration in Silicon Valley
Scope of Work

Grassroots Ecology will work with San Francisco Estuary Institute (SFEI), San Francisco Estuary Partnership (SFEP), Canopy, Peninsula Open Space Trust (POST), and other partners to plan and install urban greening projects in East Palo Alto schools, parks, and neighborhoods. These activities will be informed by the development of the Multi-Benefit Urban Greening Strategy and are intended to produce three acres of native riparian trees (live oak, valley oak, sycamore, willow, or other similar native trees) in urban greening projects; riparian functions and habitat connectivity over three acres provided for native birds, bats, and insects; reduced runoff by over 400,000 gallons per year from increased tree canopy; and decreased stormwater runoff to the Bay through canopy interception.

Task 1: Multi-Benefit Urban Greening Strategy and Implementation – East Palo Alto

Task 1.1: Grassroots Ecology will work with San Francisco Estuary Institute (SFEI), San Francisco Estuary Partnership (SFEP), and Peninsula Open Space Trust (POST) to develop a Multi-Benefit Urban Greening Strategy for increasing ecological function in the Santa Clara Valley through coordinated greening efforts, including LID. Grassroots Ecology will work with SFEI on the Urban Greening Strategy, including meetings, feedback, and contributing specific sections to the Strategy on planting palettes, maintenance guidelines, and opportunities and constraints summaries for 3-5 general types of settings that are common in the study areas, as well as general guidelines for site selection and maintenance of plantings (for example, site selection guidance could include how to evaluate how to identify sites that will need drought tolerant or water loving plants, and maintenance guidance could include details about pruning and irrigation). Grassroots Ecology will also provide review comments on the draft Urban Greening Strategy.

As part of the Multi-Benefit Urban Greening Strategy development, Grassroots Ecology staff will meet with SFEI staff a minimum of two times to review projects and development of the Urban Greening Strategy as part of the iterative process of informing both scientific/technical research and project implementation. These meetings will identify opportunities for achieving multi-benefit ecological objectives in the projects and will inform the Urban Greening Strategy. Grassroots Ecology staff will participate in one or more meetings of the Design Advisory Team, or a subset of the Team, to take advantage of Design Advisory Team expertise in improving project outcomes of the project.

Deliverables:

- 1.1a: Summary of urban greening scientific/design guidance meetings *July 31, 2018*
- 1.1b: Summary of review comments for Urban Greening Strategy *July 31, 2018*
- 1.1c: Planting palette section for Strategy, 3-5 pages, detailing appropriate plants, maintenance requirements, and summary of opportunities and constraints for 3-5 types of settings common to Santa Clara Valley *July 31, 2018*
- 1.1d: Site selection/maintenance section for Strategy, describing general approaches to site selection and maintenance *July 32, 2018*
- 1.1e: Comments on draft report *September 30, 2018*

EPA – Healthy Watersheds, Resilient Baylands – Exhibit 1 – Grassroots Ecology – 102304

7 of 30

Task 1.2: Working with the City of East Palo Alto, the urban forestry nonprofit Canopy, and SFEI, Grassroots Ecology will plan and install urban greening projects in East Palo Alto schools, parks, and neighborhoods. Site and species selection will be planned to achieve three types of wetland/riparian habitat and water quality benefits: (1) using native riparian trees to expand functional riparian habitat in neighborhoods along San Francisquito Creek; (2) creating willow groves, which provide high habitat value for wetland and riparian species; and (3) emphasizing trees and understory with maximum hydrological benefits. As part of these installations, soil conditions and understory habitat will be improved to maximize water retention, pollution capture, rainfall infiltration, and ecological value of the existing streetscape and parkways. These projects will be designed to achieve ecological and/or water quality objectives as guided by the Urban Greening Strategy, input from SFEI, and expertise from the Design Advisory Team members.

Deliverables:

1.2a: Final designs for 2-3 projects (adding up to a total of 5 when combined with implementation projects carried out in collaboration with Canopy) *June 30, 2018*

1.2b: 10 East Palo Alto tree and riparian vegetation planting/maintenance workdays *July 31, 2020*

1.2c: Before-and-after photo documentation of 2-3 constructed projects (adding up to a total of 5 when combined with implementation projects carried out in collaboration with Canopy) *July 31, 2020*

Task 1.3: Grassroots Ecology staff will attend at least one meeting each year of project partners and grant sub-recipients during the grant period.

Task 1.4: Grassroots Ecology will also assist San Francisco Estuary Institute with completion of a Quality Assurance Plan or Sampling and Analysis Plan (QAPP), by providing documentation on monitoring and other information required to complete the QAPP.

Task 1.5: Grassroots Ecology staff will provide general project administration including project workflow, contract management, invoicing, and project coordination. Grassroots Ecology will submit progress reports to the SFEP Project Manager as described in Exhibit 2.

Grassroots Ecology staff will also produce a brief summary report, documenting the incorporation of ecological and water quality benefits into the implementation of the project, as described in the Urban Greening Strategy or with guidance from SFEI. The report will also include expected achievement of short-term outcomes, and any expected long-term multi-benefit outcomes.

Deliverables:

1.5a: Invoices and Progress Reports *10th of month following end of month or quarter*

1.5b: Final report *July 31, 2020*

Budget: \$52,250

Subaward Deliverables Table

Task #	Sub-Task #	Deliverable #	Deliverable	Deadline
Task 1	1.1	1.1a	Summary of urban greening scientific/design guidance meetings	7/31/2018
		1.1b	Summary of review comments for Urban Greening Strategy	7/31/2018
		1.1c	Planting palette section for Strategy, 3-5 pages	7/31/2018
		1.1d	Site selection/maintenance section for Strategy	7/31/2018
		1.1e	Comments on draft report	9/30/2018
	1.2	1.2a	Final designs for 2-3 projects	6/30/2018
		1.2b	10 East Palo Alto tree and riparian vegetation planting/maintenance workdays	7/31/2020
		1.2c	Before-and-after photo documentation of 2-3 constructed projects	7/31/2020
	1.3	N/A	N/A	N/A
	1.4	N/A	N/A	N/A
	1.5	1.5a	Invoices and progress reports, submitted monthly or quarterly	10 th of month following end of month or quarter
		1.5b	Final Report	7/31/2020

Subaward Budget Table

Grassroots Ecology				
Task	Description	Grant Amount	Match	Total
1	Urban Greening Implementation – East Palo Alto	\$52,250.00	\$0.00	\$52,250.00
TOTAL		\$52,250.00	\$0.00	\$52,250.00

EXHIBIT 2 Invoicing Procedure

A. Subrecipient Responsibilities:

1. Subrecipient will prepare and submit to ABAG/SFEP an invoice for approval, no more frequently than one per month, to cover the services provided during the prior service period. Invoice must include a brief progress report, providing a detailed summary of work performed under the tasks described in the Scope of Work that are being invoiced for that period. Progress reports should include a discussion of the activities conducted during the service period and progress towards milestones, problems encountered and their resolution, and activities planned for the next service period. In addition, progress reports should provide a financial accounting of costs incurred during the service period and cumulative project costs by subtask.
2. Direct labor: Invoice must itemize names of staff, number of hours worked, and hourly billing rates for each task showing individual calculations and total for each task.
3. Subrecipient can only bill for actual expenses incurred at the subrecipient's actual direct labor rates, fringe benefit rates, and indirect cost rates, not to exceed the task budgets specified in the budget included in Exhibit 1.
3. Consultant or Vendor costs: Invoice must include consultant or vendor labor costs, fringe benefit cost, and indirect costs described for the monthly service period in the same manner as the subrecipient costs described above. The actual consultant or vendor invoice must be submitted to document the charges included on the subrecipient invoice.
4. Other Direct Costs (direct project expenses) are to be invoiced at cost with supporting documentation. Backup documentation must include copies of all receipts necessary to document the charges. No costs should exceed the budgeted limits delineated in the task budget without a contract amendment. No ineligible costs (such as entertainment, etc.) are allowed. Mileage will be paid at the current federal reimbursement rate (for example, the 2017 rate is 53.5 cents/mile).
5. Subrecipient invoices must summarize total contract budget, amount expended in the invoice period, and contract balance.
6. Management fees or similar charges (mark-ups) in excess of the direct costs and approved indirect rates are not allowable. This refers to any mark-up added to any direct project costs including consultant or vendor costs or other direct costs.
7. Match Costs: Subrecipient is responsible for the match share cost identified in budget included in Exhibit 1. Match funds should be reported in the monthly invoices in the same manner as the direct project costs described above including backup documentation detailing the source of the match (actual cash and/or in-kind services). Subrecipient invoices should detail match budget, match expended in the invoice period and amount remaining.
8. Electronic copies of complete invoices signed by the subrecipient contract manager including all backup documentation may be submitted in lieu of hard copy to Darcie Luce, Project Manager at darcie.luce@sfestuary.org.

ABAG/SFEP Responsibilities:

1. The ABAG/SFEP Project Manager or designee will review the submitted invoice for completeness, verify math figures, ensure the task budget is not exceeded and prepare a check requisition for approval by the SFEP Executive Director for submittal to ABAG accounts receivable.
2. ABAG accounts receivable will enter the invoice into the ABAG financial accounting system and bill the funding agency U.S. EPA monthly following completion of the prior month financial statements.
3. ABAG will pay invoices within 14 days of receipt of funds from the U.S. EPA.

4. Budget Reallocations

- a. All task budget reallocations and/or increases must be approved in advance by the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- b. The budget reallocation, if any, cannot substantially change the scope of work without approval from the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- c. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories not to exceed the total contract amount.

Exhibit 2a

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Insurance Requirements

Grassroots Ecology shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of 5 years following the completion of this project. In the event Grassroots Ecology fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by Grassroots Ecology. The limits of Insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to Grassroots Ecology's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. Grassroots Ecology shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its members, officers or employees (Indemnitees); or Grassroots Ecology shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of Grassroots Ecology; completed operations; or automobiles owned, leased, hired or borrowed by Grassroots Ecology.

(ii) For any claims related to this project, Grassroots Ecology's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of Grassroots Ecology's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, Grassroots Ecology shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or Grassroots Ecology.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. Grassroots Ecology shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.


Contractors and Lower Tier Subcontractors

Grassroots Ecology shall include the same requirements and provisions of this Attachment, including the section, with any contractor to the extent they apply to the scope of the contractor's work. Any contractor further agrees to include the same requirements and provisions of this Attachment, including the section, with any lower tier subcontractor to the extent they apply to the scope of the lower tier subcontractor's work. Grassroots Ecology will give a copy of this Attachment to any contractor, or lower tier subcontractor upon request.

Exhibit 3
 U.S. EPA Grant Agreement #W9-99T53101-0
 Subrecipient Agreement

Grant Agreement

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 99T53101 MODIFICATION NUMBER: 0 PROGRAM CODE: W9	DATE OF AWARD 09/27/2016
		TYPE OF ACTION New PAYMENT METHOD: ASAP	MAILING DATE 10/04/2016 ACH# 90017
RECIPIENT TYPE: Intermunicipal		Send Payment Request to: Las Vegas Finance Center email: lvtc-grants@epa.gov	
RECIPIENT: Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604 EIN: 94-2832478		PAYEE: Executive Director Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604	
PROJECT MANAGER Caitlin Sweeney P.O. Box 2050 Oakland, CA 94604 E-Mail: caitlin_sweeney@efestuary.org Phone: 510-622-2362	EPA PROJECT OFFICER Luisa Valleia 75 Hawthorne Street, WTR-3 San Francisco, CA 94105 E-Mail: Valleia.Luisa@epa.gov Phone: 415-972-3400	EPA GRANT SPECIALIST Maria Roverso Grants Management Section, EMD-6-1 E-Mail: roverso.maria@epa.gov Phone: 415-972-3573	
PROJECT TITLE AND DESCRIPTION San Francisco Bay Area Water Quality Improvement Fund This agreement provides federal funding in the amount of \$1,667,683 to create 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat, realign 2 creeks to deliver an estimated ~50,000 cubic yards/year of sediment to restored tidal marsh, reducing maintenance costs and increasing permitting efficiency; create 10 acres of tidal transition zone and seasonal wetlands; reduce risk of flooding and associated contamination to the community of Alviso; reduce PCB and mercury delivery to the Bay; reduce methylmercury production in the baylands; and reduce risk of landfill contamination to the Bay.			
BUDGET PERIOD 10/01/2016 - 09/30/2020	PROJECT PERIOD 10/01/2016 - 09/30/2020	TOTAL BUDGET PERIOD COST \$3,335,366.00	TOTAL PROJECT PERIOD COST \$3,335,366.00
NOTICE OF AWARD			
Based on your Application dated 08/17/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,667,683. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,667,683. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Water Division 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Craig A. Willis - Grants Management Officer			DATE 09/27/2016

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,667,683	\$ 1,667,683
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 1,567,683	\$ 1,567,683
Other Contribution	\$	\$ 100,000	\$ 100,000
Allowable Project Cost	\$ 0	\$ 3,335,366	\$ 3,335,366

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.126 - San Francisco Bay Water Quality Improvement Fund	Clean Water Act: Sec. 320	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1609W22024	1617	B	09LE	202BK4	4158			1,667,683
									1,667,683

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$97,895
2. Fringe Benefits	\$62,247
3. Travel	\$2,000
4. Equipment	\$0
5. Supplies	\$2,025
6. Contractual	\$3,159,768
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$3,323,935
10. Indirect Costs: % Base <u>various rates apply</u>	\$11,431
11. Total (Share: Recipient <u>50.00</u> % Federal <u>50.00</u> %.)	\$3,335,366
12. Total Approved Assistance Amount	\$1,667,683
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,667,683
15. Total EPA Amount Awarded To Date	\$1,667,683

Administrative Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Annual Federal Financial Report (FFR) - SF 425

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to lvfc-grants@epa.gov no later than **December 30** of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

C. Six Good Faith Efforts 40 CFR Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

D. Utilization of Disadvantaged Business Enterprises

General Compliance, 40 CFR Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

Fair Share Objectives, 40 CFR Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the [California State Water Resources Control Board \(CSWRCB\)](#), as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as [CSWRCB](#),

Negotiating Fair Share Objectives/Goals, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of

another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at Ochab.Joe@epa.gov, within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Contract Administration Provisions, 40 CFR Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

Bidders List, 40 CFR Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

E. MBE/WBE Reporting

General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the GrantsRegion9@epa.gov a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to GrantsRegion9@epa.gov . The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm .

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

F. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with the Cost Principles under 2 CFR Part 200, Subpart E. For proposal preparation, the recipient may use the appropriate completeness checklist located at: <http://www.aqd.nbc.gov/services/ICS.aspx>

The local government recipient whose cognizant federal agency has been designated by the Office of Management and Budget (OMB) must develop and submit its indirect cost rate proposal to its cognizant agency within six (6) months after the close of the governmental unit's fiscal year. If the cognizant federal agency has not been identified by the OMB, the local government recipient must still develop (and when required, submit) its proposal within that period.

The interstate agency recipient must send its proposal to its cognizant federal agency within six (6) months after the end of its fiscal year. If EPA is the cognizant federal agency of the interstate agency, local government, or special district, the recipient must send its indirect cost rate proposal within six (6) months after the end of its fiscal year to:

Regular Mail

Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: OGD Indirect Cost Rate Proposal Control Desk

Mail Courier (e.g. FedEx, UPS, etc.)

Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 5th floor
Washington, DC 20004
Attn: OGD Indirect Cost Rate Proposal Control Desk

Electronic submissions of proposals may be sent via email to OGD_IndirectCost@epa.gov.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or

regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients may draw down grant funds once a rate has been approved, but only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired.

Recipients with differences between provisional and final rates are not entitled to more than the award amount. Recipients may request EPA approval to rebudget funds from direct cost categories to the indirect cost category (to grants which have not expired or been closed out) to cover increased indirect costs.

The recipient agrees to comply with the audit requirements prescribed in 2 CFR Part 200, Subpart F, Audits of States, Local Governments, and Non-Profit Organizations.

G. Non-Federal Third-Party Contributions

This award includes \$1,667,683 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

a. Reporting

The recipient shall submit quarterly progress reports to the EPA Project Officer within 30 calendar days after the end of each Federal fiscal quarter (January 30, April 30, July 30, and October 30). These reports should include a discussion of the activities conducted during the quarter and progress towards milestones, problems encountered and their resolution, and activities planned for the next quarter. In addition, quarterly reports should identify any special EPA assistance needed, as well as provide a financial accounting of costs incurred during the quarter and cumulative project costs by task. The progress reports should include:

- a discussion of the activities conducted during the quarter (including a comparison of actual accomplishments with the anticipated outputs and outcomes specified in the workplan),
 - progress towards milestones,
 - problems encountered with achieving outputs and outcomes, and their resolution,
 - activities planned for the next quarter,
 - a financial accounting of costs incurred during the reporting period, and
 - cumulative project costs (EPA and match amounts) since the beginning of the project, by task.
- identification of any special EPA assistance needed, and an explanation of any cost overruns. The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

Within 90 days of the end of the project period, the recipient must submit 1 hardcopy of the final report, documenting project activities over the entire project period and the

recipient's achievements with respect to the project's purposes and objectives. The final report must also be submitted electronically (by Email) to the EPA Project Officer.

b. QAPP

This grant includes the performance of environmental measurements, therefore, a QA Plan or Sampling and Analysis Plan must be prepared. The recipient should consult with the Region 9 Quality Assurance Office to determine what type of QA documentation would be most appropriate and what QA guidance should be followed. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415-972-3411.

c. Grant Source Recognition

The recipient should publicly acknowledge the US EPA San Francisco Bay Water Quality Improvement Fund as the funding vehicle for the projects when the grantee is asked by public entities, federal agencies or state and local agencies about the projects and on-going results.

d. Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

e. Cybersecurity

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees

to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

END OF DOCUMENT

Exhibit 4

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Special Conditions

A. **Nondiscrimination.** Grassroots Ecology shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Grassroots Ecology shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by Grassroots Ecology to carry out these requirements is a material breach of the Agreement which may result in the termination of the Agreement or other legally available remedies.

B. **Prompt Payment.** Grassroots Ecology must pay any contractors or subcontractor for satisfactory performance no more than 30 days from Grassroots Ecology's receipt of payment from ABAG.

C. **DBE Contractor/Subcontractor.** ABAG must be notified in writing by Grassroots Ecology prior to any termination of a DBE subcontractor for convenience by Grassroots Ecology.

If a DBE contractor or subcontractor to Grassroots Ecology fails to complete work under the subcontract for any reason, Grassroots Ecology must employ the six good faith efforts described in 40 CFR §33.301 if soliciting a replacement subcontractor even if Grassroots Ecology has achieved its fair share objectives under 40 CFR Part 33, subpart D.

If applicable, Grassroots Ecology must provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors and have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. Grassroots Ecology must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package. Grassroots Ecology must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package. Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

Grassroots Ecology must maintain all records documenting its compliance with the requirements of 40 CFR Part 33, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the Grant Agreement.

D. **Clean Air Act and the Federal Water Pollution Control Act.** Grassroots Ecology shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of EPA.

Exhibit 5

U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Standard Form LLL-Disclosure of Lobbying Activities

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

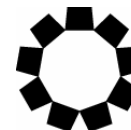
Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: February 7, 2017

To: ABAG Executive Board

From: Darcie Luce
Environmental Planner, San Francisco Estuary Partnership

Subject: **Authorization to Enter into New Contract with City of Sunnyvale for the *Healthy Watersheds, Resilient Baylands* Project**

Executive Summary

In September 2016 SFEP/ABAG was awarded a grant from U.S. EPA for the *Healthy Watersheds, Resilient Baylands* project in the amount of \$1,667,683. This grant application was completed in close partnership with SFEI, which will be leading multiple components of the project.

Healthy Watersheds, Resilient Baylands: Multi-Benefit Urban Greening and Tidal Wetlands Restoration in Silicon Valley is an effort to catalyze and demonstrate how resilience to climate change can be enhanced through implementation of multi-benefit projects. Outcomes will include 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat; two creeks realigned to deliver sediment to a restored tidal marsh; 10 acres of tidal transition zone and seasonal wetlands; reduced risk of flooding and associated contamination to the community of Alviso; reduced PCB and mercury delivery to the Bay; reduced methylmercury production in the baylands; and reduced risk of landfill contamination to the Bay.

Through this grant, the City of Sunnyvale will add a major green infrastructure component to a project in north Sunnyvale adjacent to the San Francisco Bay Trail and South Bay tidal wetlands. The Caribbean Avenue Green Street Demonstration Project will retrofit an existing arterial street with bioretention rain gardens planted with native habitat to reduce impervious surfaces, provide treatment and infiltration of runoff, calm traffic, and improve the streetscape for pedestrians and cyclists. The project will also provide more than 20 parking spaces for Bay Trail visitors, greatly increasing visibility and access to the Trail. Former road surface (1/3 mi) will be converted to approximately 3,000 ft.² of bioretention rain gardens, treating an upstream urban area of approximately 62,000 square feet.

The total project cost is \$3,335,366. The total amount of federal funding expected under this grant is \$1,667,683. Match funds of approximately 50% of the project total will be provided by project partners, including \$380,000 from the City of Sunnyvale.

Authorization to Enter into New Contract with City of Sunnyvale

February 7, 2017

Page 2

Recommended Action

The Executive Board is requested to authorize the Executive Director or designee to enter into a new Subrecipient Agreement with the City of Sunnyvale for the *Health Watersheds, Resilient Baylands* project in the amount not to exceed \$380,000.

Attachment

City of Sunnyvale Draft Subrecipient Agreement

SF Bay Area Water Quality Improvement Fund - Healthy Watersheds, Resilient Baylands
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

This Subrecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency acting on behalf of the San Francisco Estuary Partnership, a program of ABAG and City of Sunnyvale, a charter city in the State of California.

Recitals

A. Whereas, the U. S. Environmental Protection Agency (EPA) and ABAG entered into Grant Agreement #W9-99T53101-0 (Grant Agreement) for One Million, Six Hundred Sixty-Seven Thousand, Six Hundred Eighty-Three Dollars (\$1,667,683) of federal funding for the implementation of the Healthy Watersheds, Resilient Baylands project for multi-benefit urban greening and tidal wetlands restoration in Silicon Valley, including completing the Methane Monitoring for Blue Carbon Project (Grant Project).

B. ABAG and SFEP and City of Sunnyvale desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for City of Sunnyvale's participation in the Grant Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and City of Sunnyvale further agree as follows:

1.0 Applicable Documents

The following are attached and incorporated by this reference:

- 1.1.1 Exhibit 1 City of Sunnyvale Scope of Work
- 1.1.2 Exhibit 2 Invoicing Procedure
- Exhibit 2a Insurance Requirements
- 1.1.3 Exhibit 3 Grant Agreement
- 1.1.4 Exhibit 4 Special Conditions to Grant Agreement
- 1.1.5 Exhibit 5 Standard Form LLL - Disclosure of Lobbying Activities

1.2 The Subrecipient Agreement is comprised of this Base Document and Exhibits 1 through 5, inclusive, and is the complete and exclusive statement of understanding between ABAG and City of Sunnyvale, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Subrecipient Agreement.

2.0 Term of Agreement

The Subrecipient Agreement shall commence as of January 1, 2017 (Effective Date) and continue until July 31, 2020, or until terminated by the EPA pursuant to the terms of the Grant Agreement or by ABAG pursuant to the terms of this Subrecipient Agreement.

3.0 Subaward Amount

ABAG will disburse a portion of the Grant to City of Sunnyvale for carrying its responsibilities as part of the Grant Project as described in Exhibit 1. **The maximum amount to be funded by the EPA and disbursed through ABAG to City of Sunnyvale shall be Three Hundred Eighty Thousand Dollars and Zero Cents (\$380,000.00) (Subaward Amount).**

4.0 ABAG Obligations

4.1 ABAG shall be the program lead and fiscal agent for the Grant Project. ABAG shall disburse Grant funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to City of Sunnyvale unless and until such are authorized and disbursed from EPA to ABAG.

4.2 ABAG shall coordinate the activities of all subrecipients, including City of Sunnyvale, so as to implement the Grant Project in accordance with the terms of the Grant Agreement.

4.2.1 ABAG shall promptly notify City of Sunnyvale of any notices given or actions taken by the EPA if such notices or actions are likely to affect City of Sunnyvale's performance, duties, obligations or funding under this Subrecipient Agreement. To the extent practicable, ABAG shall consult with City of Sunnyvale in carrying out ABAG's responsibilities.

5.0 City of Sunnyvale Obligations

5.1 City of Sunnyvale is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. City of Sunnyvale understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by City of Sunnyvale as obligations of City of Sunnyvale, excepting only ABAG's obligations as described in section 4.

5.1.1 Without limiting subsection 5.1, City of Sunnyvale shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount, including without limitation, the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement and all applicable statutes, regulations and regulatory guidance referenced in any of the foregoing.

5.2 City of Sunnyvale shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. City of Sunnyvale shall carry out all tasks in accordance with the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement, and the Special Conditions in Exhibit 4.

5.3 City of Sunnyvale shall not cause ABAG to be in violation of the Grant Agreement or any of its requirements whether by act or omission.

5.4 City of Sunnyvale shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time.

6.0 Indemnification and Ineligible Claims

6.1 To the fullest extent allowed by law, City of Sunnyvale shall defend, indemnify, save harmless and waive subrogation against ABAG and its members, officers, employees, and agents (excluding agents who are design professionals), if any, (collectively, Indemnitees),

from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with its performance of this Contract (collectively, Claims) for bodily injury, personal injury, property damage or any violation of Federal, State or local laws, with the exception that this section shall in no event be construed to require indemnification by City of Sunnyvale to a greater extent than permitted under the public policy or laws of the State of California.

6.2 These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in Exhibit 2. Any inspection of the work by an Indemnitee is not a waiver of full compliance with these obligations. These defense and indemnification obligations shall survive the termination or expiration of the Contract for the full period of time permitted by law.

7.0 Insurance

7.1 City of Sunnyvale shall comply with the Insurance Requirements set forth in Exhibit 2.

8.0 Termination

8.1 Upon termination of the Grant Agreement, this Subrecipient Agreement shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement, unless this Subrecipient Agreement is terminated sooner in accordance with its terms.

8.2 ABAG may terminate this Subrecipient Agreement upon written approval for same from EPA in accordance with the terms and conditions of such approval.

8.3 If, through any cause, City of Sunnyvale fails to fulfill in timely and proper manner its obligations under the Agreement, or if City of Sunnyvale shall violate any covenants, conditions, or stipulations of the Agreement, and should such failure or violation continue unremedied for a period of thirty (30) days after receipt of ABAG's written notice to City of Sunnyvale specifying the details of such failure or violation, then ABAG may terminate the Agreement by giving not less than five (5) days prior written notice of such termination which specifies the effective date thereof. Upon termination under this paragraph, all unfinished or finished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by City of Sunnyvale the Agreement, shall, at the option of ABAG, become ABAG's property and City of Sunnyvale shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of termination. Notwithstanding the above, City of Sunnyvale shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of the agreement by City of Sunnyvale, and ABAG may withhold any payment to City of Sunnyvale for the purpose of set-off until such time as the exact amount of damage due ABAG from City of Sunnyvale is determined.

8.4 ABAG may terminate the Agreement at any time by giving not less than thirty (30) days prior written notice of termination to Consultant which shall specify the effective date thereof. Upon termination under this paragraph, all finished or unfinished documents and other materials described in paragraph 8.3 shall at the option of ABAG become its property. If the contract is terminated by ABAG as provided in this paragraph, Consultant shall be paid for services actually performed at the rate set forth in Exhibit A; provided that, if the Agreement is terminated due to the fault of Consultant, only the paragraph relative to termination for cause shall apply.

9.0 Notices and Administrative Contacts

9.1 All notices or notifications under this Subrecipient Agreement shall be in writing addressed to the persons set forth in this section.

9.2 All notices or notifications to ABAG shall be sent to:

Darcie Luce
San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, California 94612
510-622-2448
darcie.luce@sfestuary.org

9.3 All notices or notifications to the City of Sunnyvale shall be sent to:

Elaine Marshall
City of Sunnyvale
XX street address.
Sunnyvale, CA XXXXX
(408) 730-7720
emarshall@sunnyvale.ca.gov

10.0 Amendments and Changes

This Subrecipient Agreement may be changed only by a written amendment duly signed by ABAG and City of Sunnyvale.

11.0 Assignment and Delegation

City of Sunnyvale shall not assign its rights or delegate its duties under this Subrecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Subrecipient Agreement.

12.0 Governing Law and Venue

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. City of Sunnyvale further agrees and consents that the venue of any action brought between City of Sunnyvale and ABAG shall be exclusively in the County of Alameda.

13.0 Validity and Severability

If any provision of this Subrecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Subrecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 No Waiver

No waiver by either party of any event of breach and/or breach of any provision of this Subrecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this Subrecipient Agreement shall not be construed as a waiver thereof.

15.0 Record Retention and Inspection/Audit Settlement

15.1 City of Sunnyvale shall maintain accurate and complete financial records of its activities and operations relating to this Subrecipient Agreement in accordance with the RFIP and Grant Agreement and generally accepted accounting principles.

15.2 City of Sunnyvale agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the City of Sunnyvale and shall be made available to ABAG during the term of this Subrecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

15.3 City of Sunnyvale shall deliver all materials described in subsection 15.2 and specified by ABAG to a location to be determined by ABAG. City of Sunnyvale shall bear its own costs and expenses in this regard. However, City of Sunnyvale shall not be responsible for the costs or expenses incurred by ABAG to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement.

15.4 If an audit of the City of Sunnyvale is conducted specifically regarding this Subrecipient Agreement by any Federal auditor, or by any auditor or accountant employed by the City of Sunnyvale or otherwise, then the City of Sunnyvale shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this Subrecipient Agreement.

16.0 Lobbying and Litigation Prohibition

16.1 City of Sunnyvale shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. City of Sunnyvale shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

16.2 City of Sunnyvale agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. City of Sunnyvale shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that sub-subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any subrecipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

16.3 If applicable, City of Sunnyvale shall complete and submit Exhibit 5, Standard Form LLL - Disclosure of Lobbying Activities.

17.0 Authorization Warranty

City of Sunnyvale represents and warrants that the person executing this Subrecipient Agreement on its behalf is an authorized agent who has actual authority to bind City of Sunnyvale to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

National Estuary Program-San Francisco Estuary Program
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, City of Sunnyvale has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

DUNS No. _____

City of Sunnyvale

, City Manager (or appropriate signator)

Association of Bay Area Governments

Brad Paul, Acting Executive Director

Approved as to form:

Kenneth K. Moy, Legal Counsel

Exhibit 1

U.S. EPA Grant Agreement #W9-99T53101-0

City of Sunnyvale

Healthy Watersheds, Resilient Baylands Project for Multi-Benefit Urban Greening and Tidal Wetlands Restoration in Silicon Valley
Scope of Work

The City of Sunnyvale will add a major green infrastructure component to a project in north Sunnyvale adjacent to the San Francisco Bay Trail and South Bay tidal wetlands. The Caribbean Avenue Green Street Demonstration Project will retrofit an existing arterial street with bioretention rain gardens planted with native habitat to reduce impervious surfaces, provide treatment and infiltration of runoff, calm traffic, and improve the streetscape for pedestrians and cyclists. The project will also provide more than 20 parking spaces for Bay Trail visitors, greatly increasing visibility and access to the Trail. Former road surface (1/3 mi) will be converted to approximately 3,000 ft.² of bioretention rain gardens, treating an upstream urban area of approximately 62,000 ft.².

Task 1: Urban Greening Implementation – Sunnyvale

Task 1.1: The Caribbean Avenue Green Street Demonstration Project will retrofit an existing arterial street with bioretention rain gardens planted with native habitat to reduce impervious surfaces, provide treatment and infiltration of runoff, calm traffic, and improve the streetscape for pedestrians and cyclists. The project will also provide more than 20 parking spaces for Bay Trail visitors, greatly increasing visibility and access to the Trail. Former road surface (1/3 mi) will be converted to approximately 3,000 ft.² of bioretention rain gardens. The project will be designed to achieve ecological and water quality objectives as guided by the Urban Greening Strategy, input from SFEI, and expertise from the Design Advisory Team members.

Deliverables:

- 1.1a: Final designs demonstrating approximately 3,000 ft.² of bioretention rain gardens *June 30, 2018*
- 1.1b: Before-and-after photo documentation of constructed project *July 31, 2020*

Task 1.2: City of Sunnyvale staff will work with SFEI staff to maximize the achievement of ecological and water quality objectives in the project, as guided by the Urban Greening Strategy, input from SFEI, and expertise from the Design Advisory Team members. These meetings will identify opportunities for achieving multi-benefit ecological objectives of the projects and will inform and ground the Urban Greening Strategy. City of Sunnyvale staff will also provide review comments on the draft Urban Greening Strategy produced by SFEI.

Deliverables:

- 1.2a: Summary of 2-4 urban greening scientific/design guidance meetings *July 31, 2018*
- 1.2b: Summary of review comments for Urban Greening Strategy *July 31, 2018*

Task 1.3: City of Sunnyvale staff will participate in one or more meetings of the Design Advisory Team, or a subset of the Team, to take advantage of Design Advisory Team expertise in improving project outcomes of the project.

Task 1.4: The City of Sunnyvale will assist San Francisco Estuary Institute with completion of a Quality Assurance Plan or Sampling and Analysis Plan (QAPP), by providing documentation on monitoring and other information required to complete the QAPP.

Task 1.5: City of Sunnyvale staff will attend at least one meeting each year of project partners and grant sub-recipients during the grant period.

Task 1.6: City of Sunnyvale staff will provide general project administration including project workflow, contract management, invoicing, and project coordination. City of Sunnyvale will submit progress reports to the SFEP Project Manager as described in Exhibit 2.

City of Sunnyvale staff will also produce a brief summary report, documenting the incorporation of ecological and water quality benefits into the implementation of the project, as described in the Urban Greening Strategy or with guidance from SFEI. The report will also include expected achievement of short-term outcomes, and any expected long-term multi-benefit outcomes.

Deliverables:

1.6a: Invoices and Progress Reports

10th of month following end of month or quarter

1.6b: Final report

July 31, 2020

Budget: \$380,000

Match: \$380,000

Subaward Deliverables Table

Task #	Sub-Task #	Deliverable #	Deliverable	Deadline
Task 1	1.1	1.1a	Final designs demonstrating approximately 3,000 ft.2 of bioretention rain gardens	6/30/2018
		1.1b	Before-and-after photo documentation of constructed project	7/31/2020
	1.2	1.2a	Summary of urban greening scientific/design guidance meetings	7/31/2018
		1.2b	Summary of review comments for Urban Greening Strategy	7/31/2018
	1.3	N/A	N/A	N/A
	1.4	N/A	N/A	N/A
	1.5	N/A	N/A	N/A
	1.6	1.6a	Invoices and progress reports, submitted monthly or quarterly	10 th of month following end of month or quarter
1.6b		Final Report	7/31/2020	

Subaward Budget Table

City of Sunnyvale				
Task	Description	Grant Amount	Match	Total
1	Urban Greening Implementation - Sunnyvale	\$380,000.00	\$380,000.00	\$760,000.00
TOTAL		\$380,000.00	\$380,000.00	\$760,000.00

DRAFT

EXHIBIT 2 Invoicing Procedure

A. Subrecipient Responsibilities:

1. Subrecipient will prepare and submit to ABAG/SFEP an invoice for approval, no more frequently than one per month, to cover the services provided during the prior service period. Invoice must include a brief progress report, providing a detailed summary of work performed under the tasks described in the Scope of Work that are being invoiced for that period. Progress reports should include a discussion of the activities conducted during the service period and progress towards milestones, problems encountered and their resolution, and activities planned for the next service period. In addition, progress reports should provide a financial accounting of costs incurred during the service period and cumulative project costs by subtask.
2. Direct labor: Invoice must itemize names of staff, number of hours worked, and hourly billing rates for each task showing individual calculations and total for each task.
3. Subrecipient can only bill for actual expenses incurred at the subrecipient's actual direct labor rates, fringe benefit rates, and indirect cost rates, not to exceed the task budgets specified in the budget included in Exhibit 1.
3. Consultant or Vendor costs: Invoice must include consultant or vendor labor costs, fringe benefit cost, and indirect costs described for the monthly service period in the same manner as the subrecipient costs described above. The actual consultant or vendor invoice must be submitted to document the charges included on the subrecipient invoice.
4. Other Direct Costs (direct project expenses) are to be invoiced at cost with supporting documentation. Backup documentation must include copies of all receipts necessary to document the charges.
No costs should exceed the budgeted limits delineated in the task budget without a contract amendment. No ineligible costs (such as entertainment, etc.) are allowed. Mileage will be paid at the current federal reimbursement rate (for example, the 2017 rate is 53.5 cents/mile).
5. Subrecipient invoices must summarize total contract budget, amount expended in the invoice period, and contract balance.
6. Management fees or similar charges (mark-ups) in excess of the direct costs and approved indirect rates are not allowable. This refers to any mark-up added to any direct project costs including consultant or vendor costs or other direct costs.
7. Match Costs: Subrecipient is responsible for the match share cost identified in budget included in Exhibit 1. Match funds should be reported in the monthly invoices in the same manner as the direct project costs described above including backup documentation detailing the source of the match (actual cash and/or in-kind services). Subrecipient invoices should detail match budget, match expended in the invoice period and amount remaining.
8. Electronic copies of complete invoices signed by the subrecipient contract manager including all backup documentation may be submitted in lieu of hard copy to Darcie Luce, Project Manager at darcie.luce@sfestuary.org.

ABAG/SFEP Responsibilities:

1. The ABAG/SFEP Project Manager or designee will review the submitted invoice for completeness, verify math figures, ensure the task budget is not exceeded and prepare a check requisition for approval by the SFEP Executive Director for submittal to ABAG accounts receivable.
2. ABAG accounts receivable will enter the invoice into the ABAG financial accounting system and bill the funding agency U.S. EPA monthly following completion of the prior month financial statements.
3. ABAG will pay invoices within 14 days of receipt of funds from the U.S. EPA.

4. Budget Reallocations

- a. All task budget reallocations and/or increases must be approved in advance by the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- b. The budget reallocation, if any, cannot substantially change the scope of work without approval from the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- c. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories not to exceed the total contract amount.

Exhibit 2a

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Insurance Requirements

City of Sunnyvale shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of 5 years following the completion of this project. In the event City of Sunnyvale fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by City of Sunnyvale. The limits of Insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the City of Sunnyvale's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. City of Sunnyvale shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its members, officers or employees (Indemnitees); or the City of Sunnyvale shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of City of Sunnyvale; completed operations; or automobiles owned, leased, hired or borrowed by City of Sunnyvale.

(ii) For any claims related to this project, the City of Sunnyvale's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of City of Sunnyvale's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, City of Sunnyvale shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or City of Sunnyvale.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. City of Sunnyvale shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.


Contractors and Lower Tier Subcontractors

City of Sunnyvale shall include the same requirements and provisions of this Attachment, including the section, with any contractor to the extent they apply to the scope of the contractor's work. Any contractor further agrees to include the same requirements and provisions of this Attachment, including the section, with any lower tier subcontractor to the extent they apply to the scope of the lower tier subcontractor's work. City of Sunnyvale will give a copy of this Attachment to any contractor, or lower tier subcontractor upon request.

Exhibit 3
 U.S. EPA Grant Agreement #W9-99T53101-0
 Subrecipient Agreement

Grant Agreement

W9 - 99T53101 - 0 Page 1

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 99T53101 MODIFICATION NUMBER: 0 PROGRAM CODE: W9	DATE OF AWARD 09/27/2016
		TYPE OF ACTION New PAYMENT METHOD: ASAP	MAILING DATE 10/04/2016 ACH# 90017
RECIPIENT TYPE: Intermunicipal		Send Payment Request to: Las Vegas Finance Center email: lvtc-grants@epa.gov	
RECIPIENT: Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604 EIN: 94-2832478		PAYEE: Executive Director Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604	
PROJECT MANAGER Caitlin Sweeney P.O. Box 2050 Oakland, CA 94604 E-Mail: caitlin_sweeney@efestuary.org Phone: 510-622-2362	EPA PROJECT OFFICER Luisa Valleia 75 Hawthorne Street, WTR-3 San Francisco, CA 94105 E-Mail: Valleia.Luisa@epa.gov Phone: 415-972-3400	EPA GRANT SPECIALIST Maria Rovero Grants Management Section, EMD-6-1 E-Mail: rovero.maria@epa.gov Phone: 415-972-3573	
PROJECT TITLE AND DESCRIPTION San Francisco Bay Area Water Quality Improvement Fund This agreement provides federal funding in the amount of \$1,667,683 to create 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat, realign 2 creeks to deliver an estimated ~50,000 cubic yards/year of sediment to restored tidal marsh, reducing maintenance costs and increasing permitting efficiency; create 10 acres of tidal transition zone and seasonal wetlands; reduce risk of flooding and associated contamination to the community of Alviso; reduce PCB and mercury delivery to the Bay; reduce methylmercury production in the baylands; and reduce risk of landfill contamination to the Bay.			
BUDGET PERIOD 10/01/2016 - 09/30/2020	PROJECT PERIOD 10/01/2016 - 09/30/2020	TOTAL BUDGET PERIOD COST \$3,335,366.00	TOTAL PROJECT PERIOD COST \$3,335,366.00
NOTICE OF AWARD			
Based on your Application dated 08/17/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,667,683. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,667,683. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Water Division 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Craig A. Willis - Grants Management Officer			DATE 09/27/2016

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,667,683	\$ 1,667,683
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 1,567,683	\$ 1,567,683
Other Contribution	\$	\$ 100,000	\$ 100,000
Allowable Project Cost	\$ 0	\$ 3,335,366	\$ 3,335,366

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.126 - San Francisco Bay Water Quality Improvement Fund	Clean Water Act: Sec. 320	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1609W22024	1617	B	09LE	202BK4	4158			1,667,683
									1,667,683

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$97,895
2. Fringe Benefits	\$62,247
3. Travel	\$2,000
4. Equipment	\$0
5. Supplies	\$2,025
6. Contractual	\$3,159,768
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$3,323,935
10. Indirect Costs: % Base <u>various rates apply</u>	\$11,431
11. Total (Share: Recipient <u>50.00 % Federal 50.00 %.</u>)	\$3,335,366
12. Total Approved Assistance Amount	\$1,667,683
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,667,683
15. Total EPA Amount Awarded To Date	\$1,667,683



Administrative Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Annual Federal Financial Report (FFR) - SF 425

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to lvfc-grants@epa.gov no later than **December 30** of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

C. Six Good Faith Efforts 40 CFR Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

D. Utilization of Disadvantaged Business Enterprises

General Compliance, 40 CFR Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

Fair Share Objectives, 40 CFR Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the [California State Water Resources Control Board \(CSWRCB\)](#), as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as [CSWRCB](#),

Negotiating Fair Share Objectives/Goals, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of

another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at Ochab.Joe@epa.gov, within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Contract Administration Provisions, 40 CFR Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

Bidders List, 40 CFR Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

E. MBE/WBE Reporting

General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the GrantsRegion9@epa.gov a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to GrantsRegion9@epa.gov . The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm .

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

F. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with the Cost Principles under 2 CFR Part 200, Subpart E. For proposal preparation, the recipient may use the appropriate completeness checklist located at: <http://www.aqd.nbc.gov/services/ICS.aspx>

The local government recipient whose cognizant federal agency has been designated by the Office of Management and Budget (OMB) must develop and submit its indirect cost rate proposal to its cognizant agency within six (6) months after the close of the governmental unit's fiscal year. If the cognizant federal agency has not been identified by the OMB, the local government recipient must still develop (and when required, submit) its proposal within that period.

The interstate agency recipient must send its proposal to its cognizant federal agency within six (6) months after the end of its fiscal year. If EPA is the cognizant federal agency of the interstate agency, local government, or special district, the recipient must send its indirect cost rate proposal within six (6) months after the end of its fiscal year to:

Regular Mail

Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: OGD Indirect Cost Rate Proposal Control Desk

Mail Courier (e.g. FedEx, UPS, etc.)

Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 5th floor
Washington, DC 20004
Attn: OGD Indirect Cost Rate Proposal Control Desk

Electronic submissions of proposals may be sent via email to OGD_IndirectCost@epa.gov.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or

regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients may draw down grant funds once a rate has been approved, but only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired.

Recipients with differences between provisional and final rates are not entitled to more than the award amount. Recipients may request EPA approval to rebudget funds from direct cost categories to the indirect cost category (to grants which have not expired or been closed out) to cover increased indirect costs.

The recipient agrees to comply with the audit requirements prescribed in 2 CFR Part 200, Subpart F, Audits of States, Local Governments, and Non-Profit Organizations.

G. Non-Federal Third-Party Contributions

This award includes \$1,667,683 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

a. Reporting

The recipient shall submit quarterly progress reports to the EPA Project Officer within 30 calendar days after the end of each Federal fiscal quarter (January 30, April 30, July 30, and October 30). These reports should include a discussion of the activities conducted during the quarter and progress towards milestones, problems encountered and their resolution, and activities planned for the next quarter. In addition, quarterly reports should identify any special EPA assistance needed, as well as provide a financial accounting of costs incurred during the quarter and cumulative project costs by task. The progress reports should include:

- a discussion of the activities conducted during the quarter (including a comparison of actual accomplishments with the anticipated outputs and outcomes specified in the workplan),
 - progress towards milestones,
 - problems encountered with achieving outputs and outcomes, and their resolution,
 - activities planned for the next quarter,
 - a financial accounting of costs incurred during the reporting period, and
 - cumulative project costs (EPA and match amounts) since the beginning of the project, by task.
- identification of any special EPA assistance needed, and an explanation of any cost overruns. The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

Within 90 days of the end of the project period, the recipient must submit 1 hardcopy of the final report, documenting project activities over the entire project period and the

recipient's achievements with respect to the project's purposes and objectives. The final report must also be submitted electronically (by Email) to the EPA Project Officer.

b. QAPP

This grant includes the performance of environmental measurements, therefore, a QA Plan or Sampling and Analysis Plan must be prepared. The recipient should consult with the Region 9 Quality Assurance Office to determine what type of QA documentation would be most appropriate and what QA guidance should be followed. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415-972-3411.

c. Grant Source Recognition

The recipient should publicly acknowledge the US EPA San Francisco Bay Water Quality Improvement Fund as the funding vehicle for the projects when the grantee is asked by public entities, federal agencies or state and local agencies about the projects and on-going results.

d. Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

e. Cybersecurity

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees

to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

END OF DOCUMENT

Exhibit 4

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Special Conditions

A. Nondiscrimination. City of Sunnyvale shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. City of Sunnyvale shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by City of Sunnyvale to carry out these requirements is a material breach of the Agreement which may result in the termination of the Agreement or other legally available remedies.

B. Prompt Payment. City of Sunnyvale must pay any contractors or subcontractor for satisfactory performance no more than 30 days from City of Sunnyvale's receipt of payment from ABAG.

C. DBE Contractor/Subcontractor. ABAG must be notified in writing by City of Sunnyvale prior to any termination of a DBE subcontractor for convenience by City of Sunnyvale.

If a DBE contractor or subcontractor to City of Sunnyvale fails to complete work under the subcontract for any reason, City of Sunnyvale must employ the six good faith efforts described in 40 CFR §33.301 if soliciting a replacement subcontractor even if City of Sunnyvale has achieved its fair share objectives under 40 CFR Part 33, subpart D.

If applicable, City of Sunnyvale must provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors and have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. City of Sunnyvale must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package. City of Sunnyvale must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package. Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

City of Sunnyvale must maintain all records documenting its compliance with the requirements of 40 CFR Part 33, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the Grant Agreement.

D. Clean Air Act and the Federal Water Pollution Control Act. City of Sunnyvale shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of EPA.

Exhibit 5

U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Standard Form LLL-Disclosure of Lobbying Activities

DRAFT

DRAFT

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

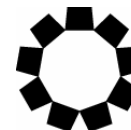
Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: February 7, 2017

To: ABAG Executive Board

From: Miriam Chion, Director, Planning and Research
Caitlin Sweeney, Director, San Francisco Estuary Partnership

Subject: **Request for Comment Letter on the Lower San Joaquin River Flow Objectives**

Executive Summary

The San Francisco Bay-Delta Estuary, the largest in western North America, encompasses San Francisco Bay and the Sacramento-San Joaquin Delta, and is the hub of a critical water supply complex for California. Two-thirds of the water used by the nine-county Bay Area Region comes from tributaries of the Delta. The Estuary's fish and wildlife are in crisis, and water quality is declining in the Delta. Many state and federal agencies are working to protect, restore, and enhance the Estuary while balancing those efforts with water supply for farmers and cities.

The State Water Resources Control Board (State Board) establishes water rights and water quality requirements to protect human, fish, and wildlife uses of the Estuary's waters through the Bay-Delta Water Quality Control Plan. This plan has not been updated in over 20 years, and is now undergoing a multi-phase update process. Phase 1 provides updated water quality objectives for the lower San Joaquin River and three major tributaries: the Merced, Stanislaus, and Tuolumne Rivers. The State Board is collecting public and agency comments by March 17th. The proposed changes in Phase 1 will affect the Estuary's ecosystem health and water districts that divert from these rivers, including Central Valley irrigation districts and the San Francisco Public Utilities Commission.

Background

The San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan or Bay-Delta Water Quality Control Plan is required by the Clean Water Act. The Plan identifies all beneficial uses of the water in the Bay-Delta Estuary, sets water quality standards, and can determine the amount and timing of water entering and moving through the Delta and into the Bay. The State Board is required to update the plan every three years, but major updates have not been completed since 1995.

The Bay-Delta Water Quality Control Plan will update water quality standards on all major tributaries of the Estuary through a multi-phase process. Phase 1 is updating water quality standards for the lower San Joaquin River and salinity standards in the southern Delta. Phase 2

Request for Comment Letter on the Lower San Joaquin River Flow Objectives

February 7, 2017

Page 2

will update water quality standards for the much larger Sacramento River and its tributaries including the Mokelumne River, as well as set Delta outflow/Bay inflow requirements. Phases 3 and 4 will entail any changes to water rights necessary to implement the revised standards, and the development and implementation of flow objectives in the Sacramento River watershed.

The Association of Bay Area Governments has signed a letter and a resolution related to the Bay-Delta Water Quality Control Plan. In 2012, the Executive Board passed Resolution 08-12 “On Ecosystem Health and the Need for Fresh Water for the San Francisco Bay-Delta Estuary,” acknowledging the chronic, artificial drought and urging for improvements to freshwater flows into the San Francisco Bay. In 2015, ABAG sent a letter signed by ABAG President Julie Pierce and seven elected officials from around the Bay, urging the State Board to consider the best available science and strengthen flow objectives when updating Phase 1 of the Bay-Delta Water Quality Control Plan.

Building on top of these actions, in 2016 the ABAG Resilience Program and San Francisco Estuary Partnership worked on earthquake water reliability and conservation management respectively, engaging key regional water stakeholders. In building relationships with Bay Area water stakeholders, the Santa Clara Valley Water District and the Bay Area Water Supply & Conservation Agency (BAWSCA) have submit Plan Bay Area comment letters and have requested to be more closely connected to the planning process in future updates as well as in the upcoming Action Plan.

Recommended Action

The Executive Board is requested to authorize the submittal of the attached letter to the State Water Resources Control Board which reiterate ABAG Executive Board Resolution No. 08-12 principles affirming that the State Water Resources Control Board's Phase I Substitute Environmental Document is a positive step to protect and restore the Bay-Delta ecosystem and ensure adequate delta outflows to support fisheries, wildlife, habitat, water quality, urban uses, agricultural uses, and other beneficial uses.

Attachments

1. Proposed ABAG Executive Board Letter
2. 2012 ABAG Executive Board Resolution No 08-12
3. 2013 ABAG San Francisco Estuary Partnership Comment Letter to SWRCB
4. 2015 Letter to SWRCB by President of ABAG, Contra Costa County, San Mateo County, and others
5. 2017 ABAG San Francisco Estuary Partnership (SFEP) Comment Letter to SWRCB
6. State Water Resources Control Board (SWRCB) Brief
7. San Francisco Public Utilities Commission (SFPUC) Brief
8. Tuolumne River Trust Brief

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



DRAFT

February 16, 2017

Felicia Marcus
Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814-0100

Dear Chair Marcus:

We would like to thank the State Water Resources Control Board for the opportunity to comment on the proposed Phase 1 updates to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan. The health and productivity of the Estuary ecosystem, which these updates are intended to improve, is vitally important to the millions of people who live, work, and play in and around the Bay and Delta.

The Association of Bay Area Governments is the Council of Governments for the nine-county, 101 city Bay Area region that circles the San Francisco Bay-Delta Estuary. The Association is guided by a 35 voting member Executive Board comprised of city, town, and county elected officials.

In 2012 the Association adopted Resolution No. 08-12 recognizing the important environmental and economic roles of the San Francisco Bay Delta Estuary. The Revised Draft Substitute Environmental Document, establishing flow objectives in the lower San Joaquin River, is a positive first step in achieving the first two principles that ABAG called for in Resolution No. 08-12:

Bay Delta Ecosystem. Recognize that protection and restoration of a healthy sustainable Bay-Delta ecosystem includes adequate water quality, outflow, and water supply, to support fisheries, wildlife and habitat in perpetuity.

Delta Outflows. Recognize that the Bay-Delta ecosystem has been in a state of “chronic drought” due to current water management practices, and ensure adequate Delta outflows to San Francisco Bay to support fisheries, wildlife, habitat, water quality and other beneficial uses.

San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan

February 16, 2017

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As the State Water Resources Control Board completes Phase 1 and future updates to the Water Quality Control Plan, we continue to urge that the other principles outlined in Resolution No 08-12 be applied:

Regional Self-Sufficiency. Incorporate sustainable approaches for improved water supply, water quality and reliability through the overarching principle of regional self-sufficiency, linked specifically to reducing reliance on exports from the Delta and reducing the current impacts on the Bay-Delta ecosystem.

Bay Area Communities. Protect the economic viability of industry, recreation, tourism, fisheries, and agriculture, and the ongoing vitality of communities throughout and along the shoreline of the greater San Francisco Bay-Delta ecosystem.

Full Financial Disclosure. The multi-decade costs of restoring habitat in the Bay and the Delta are expected to be significant as would be the full costs associated with any new or modified water management facilities. Realistic cost estimates must be calculated and made clear to both taxpayers and ratepayers throughout California before any final decisions are made. A full cost-benefit analysis of any proposed project must cover all affected geographic areas, and adverse socio-economic impacts need to be minimized and fully mitigated by the beneficiaries of the project.

Fair Representation. Represent and include local governments in any new governance structures for the Delta.

Flood Protection. Support funding and implementation of urban and non-urban flood protection, at the appropriate level of protection, through rehabilitation and restoration of wetlands wherever feasible, and improvement and maintenance of flood control levees and structures where necessary.

On behalf of the ABAG Executive Board, we thank you again for the opportunity to comment on this important document. Resolution No. 08-12 is attached for your reference.

Sincerely yours,

Julie Pierce
ABAG President
Councilmember, City of Clayton
San Francisco Estuary Partnership Implementation Committee

Cc Members, SWRCB
Clerk of the Board, SWRCB

**ASSOCIATION OF BAY AREA GOVERNMENTS
EXECUTIVE BOARD**

RESOLUTION NO. 08-12

**ON ECOSYSTEM HEALTH AND THE NEED FOR FRESH WATER FOR THE
SAN FRANCISCO BAY DELTA ESTUARY**

WHEREAS, the Association of Bay Area Governments is the home for the San Francisco Estuary Partnership, a coalition of resource agencies, non-profits, citizens, and scientists working to protect, restore, and enhance water quality and fish and wildlife habitat in and around the San Francisco Bay Delta Estuary. One of the San Francisco Estuary Partnership's purposes is to inform local governments in the region on issues critical to the health of the San Francisco Bay Delta Estuary and to enable them to effectively engage in processes that will affect its health; and

WHEREAS, at 1,600 square miles, the San Francisco Bay Delta Estuary is the largest on the West Coast and drains nearly 40 percent of California's land area, provides drinking water to nearly two-thirds of the state's population, and supplies irrigation water to four million acres of farmland. Although significantly altered since 1850, the Estuary still supports hundreds of fish, wildlife, and plant species, many found nowhere else on Earth: Almost two-thirds of the state's salmon travel through the Estuary as young fish and return to spawn as adults; almost half of the migratory birds on the Pacific Flyway pass by the Golden Gate or stop in San Francisco Bay's remaining wetlands. Brackish habitat in the Suisun Marsh provides critical habitat to many species important to the estuarine ecosystem; and

WHEREAS, the San Francisco Bay Area is the United States' fourth largest exporting region, accounting for 36 percent of California's exports. In 2009, the San Francisco Bay Area hosted over 15 million visitors, adding some \$8 billion to the Bay Area economy and many more billions of dollars to our nation's wealth. The San Francisco Bay Delta Estuary helps to power this economic engine, and the health of the ecosystem is vital to maintaining a healthy regional economy; and

WHEREAS, in a 2010 survey, 92% of Bay Area voters agreed that "It is important for the region's economy to have a clean, healthy and vibrant San Francisco Bay." The Bay is the globally recognized symbol of our region, and its health reflects on our region's capacities, values, and vibrancy; and

WHEREAS, the San Francisco Bay and the Sacramento-San Joaquin River Delta are at risk from many factors, and the State and Federal governments are proposing large-scale changes to address these factors. These include new water conveyance through and around the Delta to address state-wide water supply needs; changes to the Bay-Delta ecosystem to address declining ecosystem health and fish populations; changes to land use authority within the Delta; and changes to water allocations and management. These changes will impact the long-term health of the

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 08-12**

San Francisco Bay Estuary; and

WHEREAS, the California's State Water Resources Control Board determined in 2010 that, in order to protect public trust resources in the Sacramento-San Joaquin Bay-Delta ecosystem, 75 percent of unimpaired runoff from the Sacramento-San Joaquin watershed should flow out of the Delta and into the Estuary during the critical winter and spring periods. From 2000 to 2009, in contrast, on average only 45 percent of estimated unimpaired inflow was actually received into the estuary during these seasons; and

WHEREAS, the Association of Bay Area Government/San Francisco Estuary Partnership's *2011 State of the Bay* report also indicates that limited freshwater inflows are having a negative impact on the greater San Francisco Bay Delta Estuary, and finds that fish abundance and diversity are declining in all regions of the Bay except near the Golden Gate and that the fish community is in poor condition in Suisun Bay; and

WHEREAS, each county and city and town in the Association of Bay Area Governments will be impacted by planned actions in the Delta through potential changes in water quality and health of the San Francisco Bay.

NOW, THEREFORE, BE IT RESOLVED that the Executive Board of the Association of Bay Area Governments hereby expresses its interest in the on-going Bay-Delta planning process of the Delta Stewardship Council, the Bay Delta Conservation Plan, and the State Water Board's Delta planning and regulatory efforts, and urges that as part of any solution or conclusions reached in these critical planning and regulatory processes, the following principles be applied:

Bay-Delta Ecosystem. Recognize that protection and restoration of a healthy sustainable Bay-Delta ecosystem includes adequate water quality, outflow, and water supply, to support fisheries, wildlife and habitat in perpetuity.

Delta Outflows. Recognize that the Bay-Delta ecosystem has been in a state of "chronic drought" due to current water management practices, and ensure adequate Delta outflows to San Francisco Bay to support fisheries, wildlife, habitat, water quality and other beneficial uses.

Regional Self-Sufficiency. Incorporate sustainable approaches for improved water supply, water quality and reliability through the overarching principle of regional self-sufficiency, linked specifically to reducing reliance on exports from the Delta and reducing the current impacts on the Bay-Delta ecosystem.

Bay Area Communities. Protect the economic viability of industry, recreation, tourism, fisheries, and agriculture, and the ongoing vitality of communities throughout and along the shoreline of the greater San Francisco Bay-Delta ecosystem.

Full Financial Disclosure. The multi-decade costs of restoring habitat in the Bay

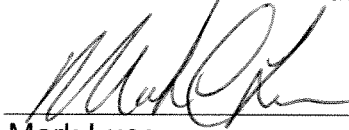
**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 08-12**

and the Delta are expected to be significant as would be the full costs associated with any new or modified water management facilities. Realistic cost estimates must be calculated and made clear to both taxpayers and ratepayers throughout California before any final decisions are made. A full cost-benefit analysis of any proposed project must cover all affected geographic areas, and adverse socio-economic impacts need to be minimized and fully mitigated by the beneficiaries of the project.

Fair Representation. Represent and include local governments in any new governance structures for the Delta.

Flood Protection. Support funding and implementation of urban and non-urban flood protection, at the appropriate level of protection, through rehabilitation and restoration of wetlands wherever feasible, and improvement and maintenance of flood control levees and structures where necessary.

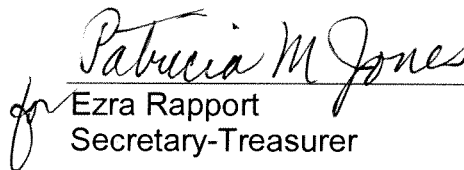
The foregoing adopted by the Executive Board this 17th day of May, 2012.



Mark Luce
President

Certification of Executive Board Approval

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 17th day of May, 2012.

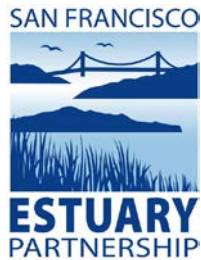


Ezra Rapport
Secretary-Treasurer

Approved as To Legal Form



Kenneth K. Moy
Legal Counsel



March 29, 2013

LATE COMMENT



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814-0100

Dear Ms. Townsend:

We would like to thank the State Water Board both for the opportunity to comment on the Substitute Environmental Documentation (SED) for the update to the Bay-Delta Plan, and for its commitment, evident in the update process, to protect public trust resources with regard to instream flows in California's rivers. This is a long-untended issue for California's environment, which grows more critical by the year as ongoing pressures on water supply are amplified by changing rainfall patterns and drought related to climate change. We commend staff for their hard work developing these draft flow and salinity objectives for the update.

The Partnership, one of 28 National Estuary Projects established under the federal Clean Water Act, is a coalition of local and regional resource agencies, non-profits, citizens, and scientists working to protect, restore, and enhance water quality and fish and wildlife habitat throughout the Estuary, which includes the Sacramento-San Joaquin River Delta. We are a state, federal and local effort. Our foundational document, the Comprehensive Conservation and Management Plan (CCMP) was approved in 1993 by both the Governor of California and the Administrator of the US Environmental Protection Agency, thereby giving the weight of both governments to the recommended actions.

The CCMP emphasizes what we have long understood: Freshwater flows throughout the Estuary's vast watershed – and especially from the San Joaquin and Sacramento rivers and their tributaries – comprise a major limiting factor for the health of the Estuary as a whole. Specifically, the amount, timing, and variability of freshwater flows into the Bay define the quality and quantity of estuarine habitat. The success of our work and the work of all our partners to protect and restore the health of the Bay depends on healthy freshwater inflows into the Bay-Delta.

In 2011, the Partnership published the *State of the Bay Report* (please see <http://www.sfestuary.org/about-the-estuary/sotb/>), which comprehensively describes the health of the Bay, measured by ecosystem attribute criteria, such as water (quality and quantity); habitats; ecological processes; and living resources. The Report's analysis revealed that the estuary is now essentially in a chronic state of drought:

Results of this analysis reveal a steady decline in springtime estuarine open water habitat, from consistently good or fair conditions prior to the 1960s to mostly poor conditions by the 1990s.

Conditions improved during the late 1990s, during a sequence of unusually wet years but declined again in the 2000s. Declining habitat conditions were driven by reductions in all three component measurements of the indicator—frequency, magnitude and duration of inflows. In the 1940s and 1950s, high quality open water habitat occurred on average in 70 percent of years. By the last decade, it occurred in just 37 percent of years, with the average location of [the intersection of fresh and salt water in spring] shifting upstream nearly 7 kilometers. The number of days with good habitat conditions during the spring has declined by two thirds, from an average of 100 days per year in the 1940s and 1950s to just 43 days per year in the most recent decade.¹

Reduced quantity and quality of springtime estuarine open water habitat impairs the health of the Bay. This seasonal estuarine habitat, which is closely linked to the abundance and survival of many of the Bay’s native fish and shrimp species, is often associated with (and created by) high flow “flood events,” normal ecological processes that transport nutrients to the Bay, promote productivity, and improve food availability for Bay fish and wildlife. The connection of such variable flows to both ecological processes and living resources underscores the importance of improving freshwater inflow conditions during the spring – if we are to achieve the CCMP goals of increasing freshwater availability to the Estuary and restoring healthy estuarine habitat, as well as the objectives of the Bay-Delta Plan.

Thus the Phase 1 update to the 2006 Bay-Delta Water Quality Control Plan (Plan) is a signal opportunity for the Board to establish flow criteria and a flow regime that will meet the objectives of both the CCMP and the Plan, and protect the beneficial uses assigned to the Bay and Delta. These uses include shellfish harvesting, commercial and sport fishing, cold freshwater habitat, migration of aquatic organisms, spawning, reproduction, and or early development of fish, estuarine habitat, wildlife habitat, and rare, threatened, or endangered species.

Phase 1 will set the tone as well as the precedent for Phase 2 (flow standards for the Delta and the Sacramento River). Therefore it is essential that Phase 1 be complete and completely effective in setting protective flow and salinity standards for the San Joaquin River and its tributaries.

Unfortunately we find significant deficiencies in the SED, and in staff’s approach to Phase 1. We concur with the comments made by U.S. EPA in their letter of March 28, 2013 and ask that the Board revise the SED accordingly. In addition, we have the following recommendations:

1. **Project objective statement:** We generally support the narrative objective statement for Alternatives 2, 3, and 4, although we strongly recommend that “reasonably controllable measures” and “conditions that reasonably contribute toward maintaining fish populations” be clearly defined:

Maintain flow conditions from the San Joaquin River Watershed to the Delta at Vernalis, together with other reasonably controllable measures in the San Joaquin River Watershed, sufficient to support and maintain the natural production of viable native San Joaquin River Watershed fish populations migrating through the Delta. Flow conditions that reasonably contribute toward maintaining viable native migratory San Joaquin River fish populations include, but may not be limited to, flows that mimic the natural hydrographic conditions to which native fish species are adapted, including the relative magnitude, duration, timing, and spatial extent of flows as they would naturally occur. Indicators of viability include abundance, spatial extent or distribution, genetic and life history diversity, migratory pathways, and productivity.

Achievement of this objective will more fully support the Boards’ public trust responsibilities as well as the recovery of salmon and steelhead, keystone species for the Delta and the Bay.

¹ San Francisco Estuary Partnership, The State of San Francisco Bay 2011, pp. 26-27. Available at http://sfep.sfei.org/wp-content/uploads/2012/12/11SFEP_STATEofSFBAY2011.pdf

However, we find that several key aspects of the SED indicate that this objective may not be achievable unless the scope of the project is modified and a different alternative is selected.

- 2. Spatial and temporal scope of the proposed project:** We understand that the complexity of flow issues in the upper watershed are significant, but the SED fails to explain the rationale for only addressing the lower San Joaquin River/San Joaquin River Basin and Southern Delta. Upper watershed contributions to flows must be taken into account when planning for the health of the Delta and salmonid fisheries. The Board should analyze the effects of restoration flows in the upper reaches on recommended flows at Vernalis. Additionally, limitation of standard setting to February-June will potentially leave young salmonids stranded, or in lethally warm waters, during critical life stages. In this nearly totally managed system, flows must be regulated year-round in order to keep temperature and dissolved oxygen, to name just two key factors, at levels healthy for fish.
- 3. Selection of the preferred alternative percentage of unimpaired flows:** We find the SED's statements supporting the adequacy of the 35 percent standard, which is very close to current conditions, to be inappropriate in light of the narrative objective.

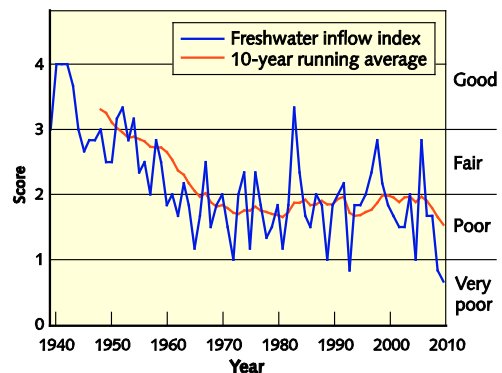
We further note that the SED does not state that an objective of 35 percent of unimpaired flows in the February-June timeframe will contribute to restored fisheries. If indeed the Board intends to accomplish the narrative objective for Alternatives 2, 3, and 4, then the Board needs to select an alternative more closely in line with accepted science, and most specifically with the Board's own 2010 Delta flows report. We acknowledge the "Note to Readers" that prefaces the online version of that report; however, we respectfully remind the Board that the objective of the current project, as stated in the SED and quoted above, is to restore the Delta's salmonid fishery. Fisheries experts from both the agricultural and environmental communities gave testimony at last week's hearing agreeing with the Board's peer reviewer, Professor Olden, that 35 percent of UF is insufficient to meet the project's objectives.

- 4. Impacts of the proposed project against baseline:** The California Environmental Quality Act (CEQA) gauges a project's impacts against a "baseline" of current conditions. In the case of Delta flows, this is problematic as baseline conditions in the Delta, and in the salmon fisheries that depend on the Delta, are already severely degraded. To quote from the Partnership's 2011 State of the Bay report:

All of the key characteristics of freshwater inflow – amounts, variability, peak flows and dry year frequency – [have been] adversely affected. Since the 1970s, overall flow conditions have been mostly poor and, in the past two decades, occasionally very poor.

During the 2000s, annual inflows were reduced by more than 50 percent on average and springtime inflows by nearly 60 percent compared to historic levels. In 1020, only 30 percent of estimated springtime unimpaired runoff from the Bay's watershed actually flowed into the Bay. Both seasonal and year-to-year variability have been reduced and, in 2010, the frequency of peak flood flows was reduced by 90 percent. In effect, based on the amounts and patterns of actual freshwater inflow, the Bay is being subjected to chronic drought conditions:

2010 was the eighth year out of the past 10 in which the total annual amount of freshwater flow into the Bay was the same (or less) than what it would have been under unimpaired conditions in a "critically dry" year. Despite above average runoff in the



watershed, inflow conditions in 2010 were very poor, and the Freshwater Inflow Index (see figure,) was the lowest on record.²

Therefore, we urge the Board to recommend flow standards that take into account the already severely degraded baseline conditions.

5. **Impacts of the revised salinity standard:** Easing the salinity standard in the southern Delta may indeed not create impacts for agricultural uses, but it may well affect flows and temperature if a higher standard allows the Bureau of Reclamation to reduce releases of water in to the system. We urge the Board to analyze these impacts.

Thanks again to the Board for the opportunity to comment on this important document. We look forward to a revised SED.

Sincerely,



Judy A. Kelly
Director, San Francisco Estuary Partnership



Amy Hutzel
Chair, San Francisco Estuary Partnership
Implementation Committee

² San Francisco Estuary Partnership, The State of San Francisco Bay 2011. Available at http://sfep.sfei.org/wp-content/uploads/2012/12/11SFEP_STATEofSFBAY2011.pdf



Felicia Marcus, Chair
 c/o Jeanine Townsend, Clerk to the Board
 State Water Resources Control Board
 1001 I Street, 24th Floor
 Sacramento, CA 95812-2000

February 9, 2015

Dear Chair Marcus:

As elected representatives of the San Francisco Bay-Delta Estuary and its 9.8 million residents, we are writing to urge the State Water Resources Control Board (SWRCB) to protect public trust resources and associated beneficial uses in the San Francisco Bay-Delta Estuary through your Phase 1 updates to the *San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (WQCP)*.

Phase 1 updates will set flow objectives for the lower San Joaquin River and four major tributaries and water quality objectives for the south Delta. Appropriate standards set in Phase 1 can begin to improve this degraded system and repair the damages wrought by decades of mismanagement. In order to address the unacceptable conditions in the lower San Joaquin River and southern Delta, we urge the SWRCB to require the following:

- **Ensure that no less than 50% of the San Joaquin River's total natural flow reaches the Delta (measured at Vernalis) during the critical February-June period.**
- **Ensure that the management of winter-spring flows in the lower San Joaquin and tributaries follows natural patterns with respect to variations in magnitude, duration, timing, and frequency of freshwater flow.**
- **Ensure that summer-fall flows are sufficient to maintain fish, wildlife, water quality, and recreational uses in the Bay-Delta, lower San Joaquin, and San Joaquin tributaries and to prevent redirection of flow reduction impacts from February-June to July-January.**
- **Ensure that any revision of salinity standards for the southern Delta is consistent with beneficial uses for fish, wildlife, and water quality for drinking water, recreation, and local agricultural uses as well as state and federal antidegradation statutes.**
- **Focus adaptive management of freshwater flows and other non-flow restoration measures on the attainment of specific and measurable biological and physical outcomes, as established in the Central Valley Improvement Act and existing Water Quality Control Plan doubling targets for anadromous fish.**

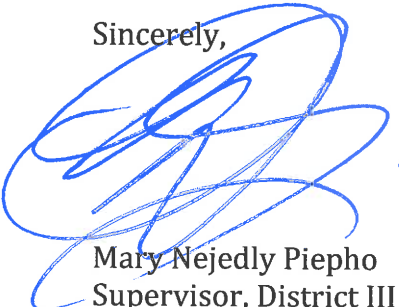
Phase 1 has the potential to uphold the public trust doctrine and set the stage for subsequent phases of the WQCP, including Phase 2 which will set flow objectives for the Sacramento River basin, in-Delta, and through-Delta flows. In order to set the appropriate physical and regulatory context for much needed, larger scale improvements in the Bay-Delta Estuary, we ask that you adopt the above recommendations of the scientific community and regulatory agencies in Phase 1.

The San Joaquin River's native fish, wildlife, and supporting habitats depend on healthy rivers and clean water. Healthy riverine and estuarine ecosystems support fisheries including: recreational fishing for steelhead, sturgeon, and flounder and both recreational and commercial fishing for Chinook salmon and Pacific herring. These fisheries provide jobs in communities throughout the Bay and Delta, in the Central Valley, and along California's coast. Similarly, freshwater flows and water quality affect recreational opportunities, municipal water use, agricultural operations, and wetlands restoration efforts in the Bay and Delta.

In recent years, only one-third of available freshwater flows have reached the Delta from the San Joaquin River watershed during the critical winter-spring period. Southern Delta water quality has been highly degraded by the lack of fresh water. These status quo conditions have resulted in the impairment of public trust resources and negative impacts to the Delta economy. A large body of scientific studies indicates that major improvements in flow and salinity conditions are necessary to protect public trust resources and associated beneficial uses in these waters.

The ongoing drought and over-allocation of freshwater supplies are causing precarious and desperate conditions in our riverine and estuarine ecosystems. We urge the SWRCB to seize this once-in-a-generation opportunity to restore the balance between the needs of water users and the ecosystems of the lower San Joaquin River and Bay-Delta Estuary.

Sincerely,



Mary Nejedly Piepho
Supervisor, District III
Contra Costa County



Doug Hardcastle
Mayor
City of Oakley



Mark Luce
Supervisor, District II
Napa County



Dave Pine
Supervisor, District I
San Mateo County

See attached letter

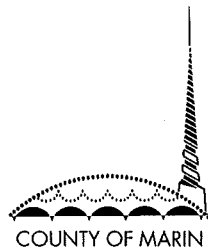
See attached letter

Steve Kinsey
Supervisor, District IV
Marin County

Katie Rice
Supervisor, District II
Marin County



Julie Pierce
President
Association of Bay Area Governments



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January 27, 2015

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Felicia Marcus, Chair
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812-2000

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Improvement Act and existing Water Quality Control Plan doubling targets for anadromous fish.

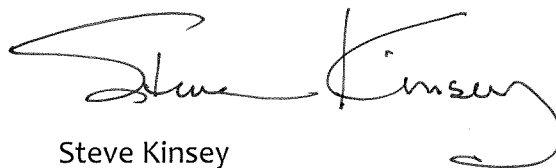
We regard Phase 1 of the WQCP as a litmus test of your support for implementing the public trust doctrine across the state and as an indicator of your approach to Phase 2 updates, which will set flow objectives for the Sacramento River basin, in-Delta, and through-Delta flows. In order to set the appropriate physical and regulatory context for much needed, larger scale improvements in the Bay-Delta Estuary, we ask that you adopt the recommendations of the scientific community and regulatory agencies in Phase 1.

A failure to follow the best available science in Phase 1 will argue poorly for the SWRCB's willingness and ability to set adequate water quality conditions in Phase 2. The San Joaquin River's native fish, wildlife, and supporting habitats depend on healthy rivers and clean water. Healthy riverine and estuarine ecosystems support fisheries including: recreational fishing for steelhead, sturgeon, and flounder and both recreational and commercial fishing for Chinook salmon and Pacific herring. These fisheries provide jobs in communities throughout the Bay and Delta, in the Central Valley, and along California's coast. Similarly, freshwater flows and water quality affect recreational opportunities, municipal water use, agricultural operations, and wetlands restoration efforts in the Bay and Delta.

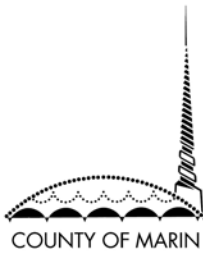
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Sincerely,



Steve Kinsey



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January 27, 2015

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c/o Jeanine Townsend, Clerk to the Board
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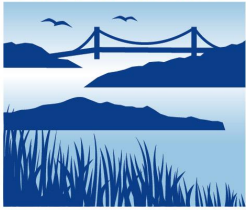
Sincerely,



Katie Rice

SFEP

SAN FRANCISCO

**ESTUARY
PARTNERSHIP**

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7 FEBRUARY 2017

Felicia Marcus, Chair

State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814-0100

Dear Chair Marcus;

We would like to thank the State Water Resources Control Board (State Board) for the opportunity to comment on the proposed Phase 1 updates to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (WQCP). The health and productivity of the Estuary ecosystem is vitally important to the millions of residents who live, work, and play in and around the Bay and Delta. This great estuary depends on a vibrant array of aquatic, wetland, and upland habitat, a diversity of fish and wildlife species, and a fluctuating, dynamic mix of ocean water with high-quality, cold, fresh water from the tributaries to the Bay-Delta Estuary, including the San Joaquin River.

The San Francisco Estuary Partnership (Partnership), one of 28 National Estuary Programs established under the federal Clean Water Act, is a local, state, and federal partnership committed to increasing the health and resiliency of the San Francisco Bay-Delta Estuary. The Partnership is guided by an Implementation Committee comprised of over 30 representatives from local, regional, state, and federal resource agencies, non-profits, citizens, and scientists.

According to the Partnership's 2015 State of the Estuary Report (<http://www.sfestuary.org/about-the-estuary/soter/>), a third or less of the natural runoff from the San Joaquin River and other tributaries now reaches the estuary (Figure 1), creating negative impacts to water quality and habitat for native fish and wildlife. This depletion of freshwater inflow, a vital component of estuaries, has contributed to declining salmon and other native fish and wildlife populations, deteriorating water quality, reduced sediment delivery, more frequent toxic algal blooms, and higher pollutant concentrations in the Bay and Delta.

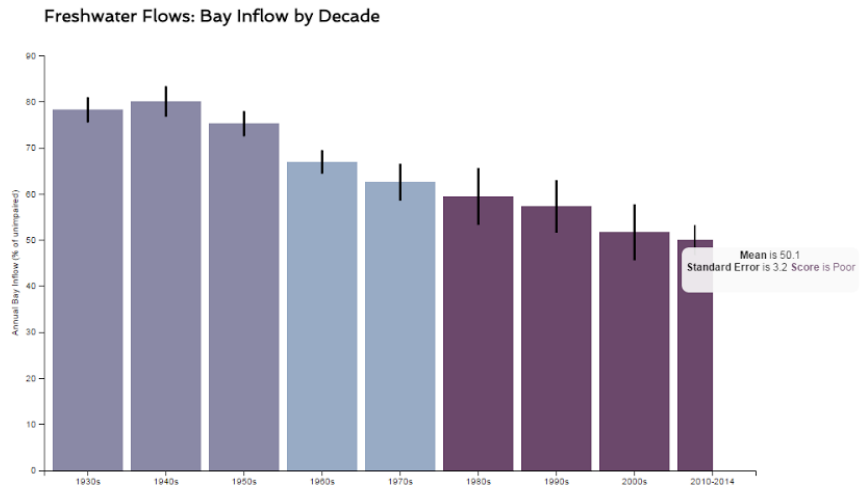


Figure 1. Freshwater inflows from the Delta to the Bay, as a percentage of unimpaired flow, have been declining for the last 60 years. Source: State of the Estuary Report 2015

The Partnership’s foundational document, the Comprehensive Conservation and Management Plan, first released in 1993 and recently updated in 2016, has consistently identified improvements to freshwater inflows as one of the key actions needed for a thriving, resilient San Francisco estuary. The 2016 update, known as the Estuary Blueprint, calls on the State Board to update the WQCP flow objectives, and commits the Partnership to providing concise, scientifically sound data to inform this process.

The data from our partners at the natural resource agencies indicates that the overall approach the State Board has taken to the Phase 1 update is appropriate and well-grounded in current science; however, the proposed flow objectives of an adaptively managed range of 30-50% unimpaired flow (UF), with a recommended starting point of 40% UF, may not adequately protect fish and wildlife and water quality in the estuary, lower San Joaquin River, and San Joaquin tributaries. In its comment letter dated December 29, 2016, the Environmental Protection Agency (EPA) states: “Despite forecasted improvements at the 40% UF target, multiple scientific studies indicate flows higher than 40% of UF may be needed to meet the *Salmon Protection Objective* and protect the beneficial use. The proposed 40% UF does not achieve CDFW [California Department of Fish and Wildlife] flow recommendations...or the FWS [U.S. Fish and Wildlife Service] recommended flow targets...” The California Department of Fish and Wildlife, in its comment letter dated March 28, 2013 on the previously proposed flow objectives, states, “Substantial evidence demonstrates that approximately 50-60% unimpaired flow is the minimum necessary to reestablish and sustain fish and wildlife beneficial uses.”

We commend the State Board for recognizing the importance of non-flow measures as part of the complex interaction of factors that can assist in

recovery of the estuarine ecosystem. Yet we are concerned that the best available science provided by fish and wildlife agencies, academia, conservation groups, and others shows that more water from the San Joaquin River system is needed to reach the estuary throughout the year, especially in the critical winter and spring period. The Phase 1 updates to the WQCP will set minimum requirements for the amount of inflow from the tributary rivers of the San Joaquin basin to the estuary. Appropriate standards set in Phase 1 can begin to improve this degraded system, repair the damages of the past, and provide resiliency to the natural resources of the Bay and Delta in the future. These standards should provide both the safeguards and flexibility needed to ensure protection of endangered fish and wildlife and human health and safety during severe or extended drought. We support timely and strong action by the Board to increase the vitally important flows on these overburdened rivers that feed the Bay-Delta ecosystem.

The Board's final decision should be based on the best available science, ensure that enough water reaches the estuary to reverse the declines of fish and wildlife and protect the beneficial uses of water as required by state and federal law, and provide adequate protection for our Bay Area and coastal fishing communities, recreation, water quality, and the wildlife of our great San Francisco Bay-Delta estuary. The San Francisco Estuary provides an unparalleled place to work, live, play, and raise our families. Bay and Delta residents are invested in stewardship of the Estuary, as evidenced by the recent passage of Measure AA, funding Bay wetland restoration. In order to remain good stewards of the Estuary and promote continued economic growth, however, we must face the environmental challenges ahead of us.

Thank you again for the opportunity to comment on this important document.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Hutzel". The signature is fluid and cursive, with the first name "Amy" being more prominent than the last name "Hutzel".

Amy Hutzel

**Chair, San Francisco Estuary Partnership Implementation
Committee**

cc: Clerk of the Board
other Board members



Fact Sheet

Revised Draft Substitute Environmental Document for Flow Objectives on the Lower San Joaquin River and Salinity Objectives for the Southern Delta

Overview

The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) includes the Sacramento-San Joaquin Delta, Suisun Marsh, and San Francisco Bay. California's two major rivers, the Sacramento and the San Joaquin, converge in the Delta and meet incoming seawater from the Pacific Ocean in San Francisco Bay. Water diversions from the Delta supply a portion of the drinking water to more than two thirds of Californians and for millions of acres of farmland.

On Sept. 15, 2016, the State Water Resources Control Board (State Water Board) staff released a draft proposal to update water quality requirements for salinity in the southern Delta and water flows in major tributaries to the San Joaquin River (the Stanislaus, Tuolumne, and Merced Rivers), which drains into the southern Delta. The refined salinity requirements reflect updated scientific information about salt levels that reasonably protect farming in the southern Delta. The new flow requirements for the San Joaquin River's major tributaries recognize the vital role upstream water flows provide for habitat and migratory signals for native fish species. In summary, the draft proposes increasing flows for fish and wildlife and adjusts the salinity requirements to a slightly higher level to reflect updated scientific knowledge.

State Water Board Responsibility

The State Water Board holds dual responsibilities of allocating surface water rights and protecting water quality. The State Water Board allocates water through an administrative system that is intended to maximize the beneficial uses of water while protecting the public trust, serving the public interest, and preventing the waste and unreasonable use or method of diversion of water. This requires balancing of all of those interests.

State water quality law requires the adoption of water quality control plans that identify existing and potential beneficial uses of waters of the state and establish water quality objectives to protect these uses. The plans also contain implementation, surveillance and monitoring elements.





While most water quality control planning is done by the Regional Water Quality Control Boards, the State Water Board has authority to adopt statewide water quality control plans and adopts the *Water Quality Control Plan the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Bay-Delta* (Bay-Delta Plan) because of its importance as a major source of water supply for the state. The Bay-Delta Plan protects water quality in the region and includes water quality objectives to protect municipal and industrial, agricultural, and fish and wildlife beneficial uses.

The Bay-Delta Plan

The Bay-Delta Program resides in the State Water Board's Division of Water Rights because of the critical importance of flow objectives in the Bay-Delta Plan. Among taking other actions, the State Water Board may implement the Bay-Delta Plan through water right actions.

Developing the Bay-Delta Plan

The State Water Board is in the midst of developing and implementing updates to the Bay-Delta Plan and flow objectives for priority tributaries to the Delta to protect beneficial uses in the Bay-Delta Watershed. For administrative convenience, the various proceedings are referred to as phases. This phase (Phase 1) proposes amendments to the Bay-Delta Plan involving the Lower San Joaquin River flow objectives and southern Delta salinity objectives.

In a separate process, referred to as Phase 2, the State Water Board is reviewing and considering updates to other elements of the Bay-Delta Plan, including Delta outflows, Sacramento and tributary inflows (other than the San Joaquin River inflows), Suisun Marsh salinity, Delta Cross Channel Gate closure, export limits, and reverse flows in Old and Middle River. In Phase 3, the State Water Board will implement changes to the Bay-Delta Plan from Phases 1 and 2 through water right actions; in addition, the revised objectives may be implemented through water quality actions. Phase 4 focuses on the development and implementation of flows in the Sacramento River Watershed to address tributary-specific public trust needs, with consideration for other beneficial uses of water, and will be integrated with the Phase 2 effort. A draft scientific basis report for the Phase 2 proceeding was released Oct. 14, 2016; draft Phase 2 proposed amendments to the Bay-Delta Plan will be released in 2017.

Phase 1 Substitute Environmental Document

The State Water Board previously released a Draft Substitute Environmental Document (SED) in December 2012 (2012 Draft SED). This recirculated Draft SED, released on September 15, 2016, makes substantial changes to the 2012 Draft SED in consideration of the large number of oral and written public comments received concerning that document, and in light of additional information, including information learned from the recent drought.



Changes were also made in response to the state's adoption in 2014 of a state policy for sustainable groundwater management (Wat. Code, § 113) and passage of the Sustainable Groundwater Management Act (SGMA) (Wat. Code, §§ 10720 et seq.), which provide a roadmap and directive for sustainable local groundwater management.

Phase 1 Plan Amendments

In Phase 1, the State Water Board is proposing to update two elements of the 2006 Bay-Delta Plan:

- San Joaquin River flow objectives for the protection of fish and wildlife: the flow element of the proposed plan update would increase the required flows to be left in the rivers and would change the area currently protected by flow requirements by adding compliance locations on the Stanislaus, Tuolumne, and Merced Rivers, instead of only on the San Joaquin River at Vernalis.
- Southern Delta salinity objectives for the protection of agriculture: the salinity element of this proposal would adjust the salinity requirements to a slightly higher level to reflect updated scientific knowledge of salt levels that reasonably protect farming. Monitoring and compliance locations would be changed to better reflect overall salinity levels and protection of agriculture.

San Joaquin River Flow Objectives

- The recirculated Draft SED recommends increasing flow on the San Joaquin River and its tributaries to a range of 30 to 50 percent, with a starting point of 40 percent of unimpaired flow from February through June. Unimpaired flow represents the water production of a river basin, unaltered by upstream diversions, storage, or by export or import of water to or from other watersheds. Historical median February through June flows from 1984–2009 in the Merced, Tuolumne, and Stanislaus Rivers were, respectively, 26, 21, and 40 percent of unimpaired flow. In other words, half of the time more than 60 or 70 percent of each river's flow is diverted out of the river during these months.
- Scientific studies show that flow is a major factor in the survival of fish like salmon and that current flows are inadequate to protect many endangered and threatened species, as well as species relied upon by the commercial fisheries. The Draft SED recognizes that other factors, like predation and loss of habitat, affect fish populations, and those factors are also addressed in the Draft SED.
- The unimpaired flow requirement is designed to mimic the cues of nature that species have evolved to respond to, but is not intended to be a rigid and fixed percent of unimpaired flow. It is intended to provide a quantity of water as a



baseline, but the proposal provides for, and encourages, collaboration to use the flows as a block of water that can be “shaped” or shifted in time to provide more functionally useful flows that provide increased habitat, more optimal temperatures, or a migration cue. This type of targeted effort can provide more timely and efficient use of flows than a set regime.

- The Draft SED recognizes the financial and operational challenges to local economies of reduced diversions. The flow requirement considers the needs for fish and wildlife along with the needs of agriculture and local economies.
- Stakeholders are encouraged to work together to reach voluntary agreements that could implement Bay-Delta Plan objectives for fish and wildlife beneficial uses. Voluntary actions to implement non-flow measures to improve conditions for fish and wildlife may support a change in the flows within the 30 to 50 percent range.
- The proposal contemplates that the biological goals will be among the tools that inform future State Water Board decisions on whether to adjust the unimpaired flow percentage within the 30 to 50 percent range. Put another way, adaptive implementation will optimize flows and take into account actual improvements in biological conditions that support native fish. Adaptive implementation of flows will also allow a nimble response to changing information and changing conditions while minimizing unintended impacts.

Southern Delta Salinity Objectives

- The recommended amendment to the southern Delta salinity objective (southern Delta salinity proposal) would eliminate the seasonal element of the current objective by changing the objective to a higher salinity level (1.0 deciSiemens per meter [dS/m] year-round), from the current 0.7 dS/m April through August and 1.0 dS/m September through March.
- Analysis of southern Delta water quality and crop salinity requirements shows that the existing salinity conditions in the southern Delta are suitable for all crops and that the existing April through August salinity objective is actually lower than what is needed to reasonably protect agriculture.
- The United States Bureau of Reclamation will be required to continue to comply with the 0.7 dS/m salinity level for the San Joaquin River at Vernalis as a condition of its water rights.



- The revised water quality objectives coupled with the implementation measures included in the Bay-Delta Plan update would provide the same or better conditions for agricultural uses in the Delta, as compared to existing conditions through the continuation, or improvement, of existing management actions, including maintenance of water levels.
- The proposal includes requirements that the State Water Project and Central Valley Project address the impacts of their export operations on water levels and flow conditions that may affect salinity conditions in the southern Delta.
- The southern Delta salinity proposal would also replace the three current fixed points for monitoring southern Delta salinity compliance, and instead identifies three extended channel segments for monitoring conditions and measuring compliance.
- Increased February through June flows under the San Joaquin River flow element would improve salinity conditions in the southern Delta early in the irrigation season.

Next Steps

This is a draft staff proposal and SED. Comments on both the proposed Bay-Delta Plan amendments and the Draft SED are due by noon on Jan. 17, 2017. A public hearing will be held on Nov. 29, 2016 and Jan. 3, 2017 in Sacramento; Dec. 16, 2016 in Stockton; Dec. 19, 2016 in Merced; and Dec. 20, 2016 in Modesto, to receive additional oral comments.

Staff will prepare a draft final SED for consideration by the State Water Board's members. The Board members will consider the draft Final SED before approving the project, and the SED will become final upon project approval. The Board will consider approving the proposed Bay-Delta Plan amendments at a public meeting that will be held in 2017.

An expanded summary of the proposed updates to the Bay-Delta Plan is available [here](#).

(This fact sheet was last updated on Oct 18, 2016.)

State Water Resources Control Board (SWRCB) Revised Substitute Environmental Document (SED)

ISSUE

The SWRCB has proposed to update part of California's 2006 Bay-Delta Plan, which is designed to protect water quality in the Sacramento-San Joaquin Delta Estuary. In order to improve conditions for fish and wildlife (primarily salmon and steelhead), the SWRCB is proposing to increase the San Joaquin River flow objectives (i.e., release more river water from the San Joaquin River tributaries into the Delta). In 2012, they released the original CEQA document (SED) proposing 35% unimpaired flow on the Stanislaus, Tuolumne and Merced Rivers. In September 2016, they updated this recommendation to 40% unimpaired flows.

IMPACTS

The San Francisco Public Utilities Commission's (SFPUC) 2.6 million water customers in San Francisco and neighboring areas obtain **85%** of their water from the Tuolumne River. This large percentage however only accounts for 14% of the diversion from the Tuolumne. While our diversions are a small percentage, any reductions, such as increasing unimpaired river flows to 35 or 40%, greatly limits this water supply and has severe implications for the San Francisco Bay Area.

Our analysis of the 2012 recommendation (35% unimpaired flows) shows a significant impact to our service area of **50% shortage of water** due to rationing during droughts.

We are now performing an extensive analysis of the new 2016 proposal (3500+ pages) at 40% unimpaired flows. We anticipate:

1. **Jeopardized growth and development across the Bay Area including much needed housing projects from San Francisco to San Jose**

- Per the state's Urban Water Management Planning Act, water suppliers must prepare an Urban Water Management Plan (UWMP) every 5 years to demonstrate there is enough water supply for our existing population and any developments on the horizon.
- Any new large developments such as a project over 500 dwelling units not included in the UWMP must have its own Water Supply Assessments (WSA).
- Developers must show through the WSA they have guaranteed water supplies in perpetuity in order to get approval for their project.
- Cities such as San Jose and Santa Clara who want to become permanent customers will not be able to get guaranteed water supplies from SFPUC.

2. **Severe water shortage and rationing** (new analysis forthcoming)

- San Francisco has one of the lowest per capita residential water use statistics in the state at 41 gallons per person, per day and our wholesale customers outside the city use 60 gallons per day, still well below the average of 83 in the state.
- No major metropolitan area in the country has usage this low.
- For example, if San Francisco had to reduce water use by 40%, that would limit us to 25 gallons per person, per day

3. **Substantial job loss and dollar costs** (new analysis forthcoming)

4. Inability to satisfy our **legal obligations** of providing our permanent Wholesale Customers 184 million gallons per day.

SED recommendations to mitigate effects on San Francisco are infeasible

The 2016 SED concludes incorrectly that San Francisco would not have major impacts because we could obtain additional water through other means:

- Water transfers: Especially during times of drought, it is unrealistic to expect other parties who need the water themselves would sell us their water
- Desalination: Plants are expensive and only provide a small percentage of what we need; they have potential negative environmental impacts and can take decades to build
 - Desalinating water is an energy intensive process. The residual concentrate has potential negative effects when it is discharged back to the Bay
 - The minimum timeline for a new major plant is 12 years but more commonly can take 20+ years
- In-Delta diversion: There are many other water rights holders in the Delta. Because we would be last in line, we would not get water in times of drought as a junior water rights holder. On top of that, we would need to construct a new water filtration facility at a cost well in excess of a billion dollars.

Even *if* we could obtain additional water supplies, it would result in significant rate increases to develop or obtain new sources, on top of all the capital improvements that we are in the process of doing.

SOLUTIONS

The SFPUC is very committed to improving the conditions for fish and wildlife on the San Joaquin Estuary as we have worked extensively for decades in collaboration with others. It is a complicated problem with many factors; in the 1990's, flow was increased but the population of fish decreased.

Solutions must include both flow and non-flow measures to improve habitat conditions on the Tuolumne River while providing customers with reliable water supply:

- Optimizing current flow schedule based on the latest science
 - More flexibility on amount and timing of the flow including which months
- Non-flow measures supported by 35 recently completed studies on fishery habitat including:
 - Predator control (many juvenile migratory fish are eaten by predators such as striped bass)
 - Gravel augmentation (improved spawning habitat for migratory fish)
 - Large woody debris (improved rearing habitat for migratory fish)

NEXT STEPS

Comments on the proposal are due to the SWRCB by **March 17, 2017** and they are planning to consider approving the SED in **August 2017**. In the meantime, the SFPUC and other stakeholders are participating in negotiations initiated by Governor Brown.

A negotiated settlement is better than 20 years of litigation and no action.

Instead of adopting a flawed plan, we believe the best solution is a voluntary agreement with the SFPUC and other affected stakeholders including the Turlock and Modesto Irrigation Districts. This negotiated settlement would be a critical part of a larger solution to the state's water issues including the California Water Fix and Sacramento River flows. Without a negotiated settlement, stakeholders can engage in litigation with the SWRCB for 20 years before a settlement is reached. This delay would be costly for all involved, especially for fish and wildlife populations, which will continue to decline in the meantime.

If you have any questions, please contact Emily Lam, Director of Government Affairs, at EmLam@sfgwater.org.



The Bay Delta Water Quality Control Plan

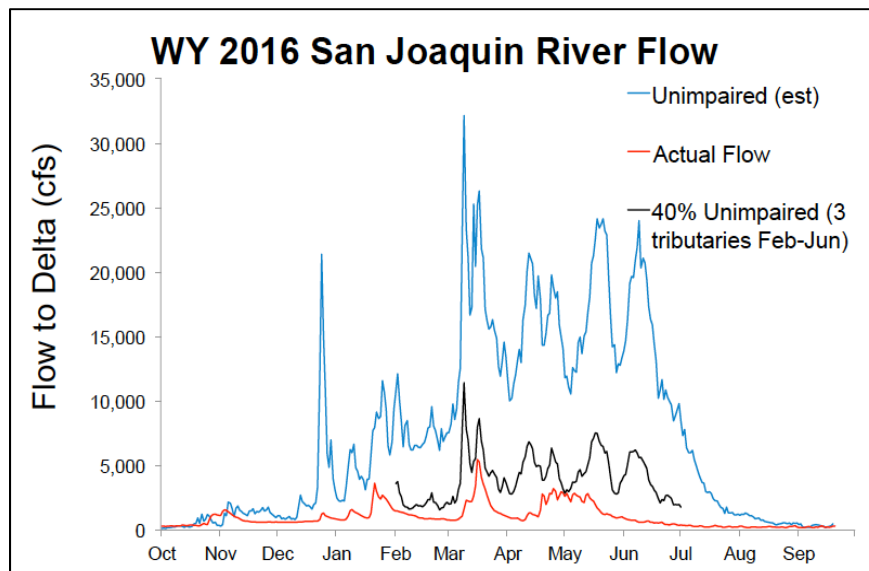
San Joaquin River Freshwater Flow Standards

About the Bay Delta Plan

The California State Water Resources Control Board is updating the Bay Delta Water Quality Control Plan to meet the co-equal goals of ecosystem protection for the San Francisco Estuary and maintaining a reliable water supply for millions of Californians. Phase 1 will update flow objectives for the San Joaquin River and its major tributaries to protect fish and wildlife. It also will update salinity standards to protect agriculture in the southern Delta.

In 2010 the State Water Board issued a report titled *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem* that determined that approximately 60% of unimpaired flow between February and June would be fully protective of fish and wildlife in the lower San Joaquin River and its three major tributaries – Stanislaus, Tuolumne and Merced Rivers.

On September 15, 2016 the Water Board released a draft environmental impact document for Phase 1 that calls for 40% of unimpaired flow (an estimate of what would occur if there were no storage or diversion of water upstream) from February through June on the lower San Joaquin, Stanislaus, Tuolumne and Merced Rivers. Flows could range from 30-50% depending on whether established goals and objectives are met.



Action Needed

The Bay-Delta and rivers that feed it have experienced serious decline over the past few decades. Consider these facts:

- The Bay-Delta forms the West Coast’s largest estuary, providing habitat for more than 500 species of wildlife. It serves as a major stopover on the Pacific Flyway and as a migration pathway for salmon, steelhead and sturgeon traveling to and from their home streams to the Pacific Ocean.
- On average, less than 50% of the freshwater flow from the Central Valley reaches the Bay, and in some years less than 35%. Reducing inflows shifts the size and location of the ecologically-important *salinity mixing zone*, affecting everything from plankton to marine mammals. Between 1975 and 2014, the **natural** unimpaired runoff in the watershed was only low enough to create a “super-critically dry” year once, but upstream diversions captured so much runoff during those four decades that the Bay experienced “super-critically dry” conditions in 19 years instead of just one.
- Historically, populations of spawning salmon may have exceeded 400,000 fish in the San Joaquin River Basin, but in many recent years that figure has plummeted to just a few thousand.
- Salmon are a keystone species, providing food for other animals and transporting nutrients from the ocean to upland habitats. More than 100 species depend on salmon, so we’re really talking about reviving a salmon-based ecosystem.
- Low river flows impede fish passage, concentrate pollutants, raise water temperatures, decrease dissolved oxygen, and eliminate migratory cues for fish returning to spawn.
- Non-flow environmental restoration measures, such as floodplain and habitat restoration, temperature management, and invasive aquatic plant and animal removal all require sufficient flows for successful implementation. Flows should be sufficient to inundate floodplains, which serve as critical habitat for juvenile salmon and other fish.
- The commercial salmon fishery in California is on the brink of collapse. The salmon population was so low in 2008 and 2009 that the commercial fishing season had to be cancelled, resulting in the loss of more than 2,200 jobs and \$255 million in annual revenue.
- Reduced freshwater inflow has changed the chemistry of the Delta, enabling cyanobacteria to thrive. These blue-green algae produce neurotoxins that can make people sick and kill plankton and wildlife.

For a slideshow overview of the Bay Delta Plan, please visit:

<https://www.youtube.com/watch?v=ofiJ-il7uJE&t=16s>

We Can Have a Healthy Environment and a Vibrant Economy

The Bay Delta Plan calls for increasing unimpaired flows on the Tuolumne by 20% between February and June – a critical time for rearing and outmigration of juvenile fish. This amounts to a 14% increase in unimpaired flow over the course of a year. At most, the SFPUC might be obligated to produce 7% of unimpaired flow over the course of a year. This will not be difficult given the following facts:

- In an average year, the SFPUC has the right to capture three times as much water from the Tuolumne as is used by its 2.6 million customers.
- The SFPUC has extensive storage capacity, buffering it from prolonged droughts. This coming summer the SFPUC will have enough water in storage to last six years. Even at the height of the drought, the SFPUC had enough water in storage to last three years. Beginning in January of this year, large amounts of water (often the maximum allowed without causing flooding downstream) was and is being released from reservoirs to create floodwater storage capacity. This water would have been better used to provide ecosystem benefits over the past few years.
- In the Hetch Hetchy service area, water use decreased by 30% between 2006 and 2016 as a result of water conservation. Meanwhile, the economy grew and jobs were created.
- Through better management of snowmelt and revisions to outdated flood control rules, more water could be captured on the Tuolumne in normal and wet years.
- Advancement in water-efficient technologies and purification of waste water could yield large amounts of drought-proof “new water” in urban areas.

For more information about potential socioeconomic impacts to the Bay Area, please visit:

<https://www.youtube.com/watch?v=FJQ5Rhdu6vY&feature=youtu.be> and
<https://www.tuolumne.org/trt-critique-sfpuc-brief/>

Increasing flows on the Tuolumne, the San Joaquin River, and other tributaries to the Bay-Delta Estuary through this and future phases of the Bay-Delta Water Quality Control Plan will also improve water quality conditions in the San Francisco Bay and Delta, aid in wetland restoration efforts, and improve the productivity, abundance, and diversity of the aquatic food web throughout the San Francisco Estuary.

About Tuolumne River Trust

The Tuolumne River Trust promotes the stewardship of the Tuolumne River and its tributaries to ensure a healthy watershed, from Yosemite National Park to the San Joaquin River and the San Francisco Bay-Delta. Founded in 1981, the Trust is the only organization working throughout the watershed, linking Sierra and Valley conservation issues and forging strong ties between rural mountain and valley regions and Bay Area urban communities.

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TO: Association of Bay Area Governments (ABAG) Executive Board
Metropolitan Transportation Commission (MTC)
Joint MTC Planning Committee and ABAG Administrative Committee

DATE: February 13, 2017

FR: Brad Paul, ABAG Acting Executive Director
Steve Heminger, MTC Executive Director

RE: Draft Contract for Services for MTC/ABAG Staff Consolidation for Review and Input

Summary and Requested Action

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) jointly retained Management Partners (MP) to conduct a study on the potential merger of the two agencies. MP presented the Options Analysis and Recommendation Report dated April 18, 2016 with seven options. The agencies joined in expressing policy support for Option 7 that proposes ABAG and MTC entering into (1) a contract to consolidate staff functions under one executive director (CS) and (2) a memorandum of understanding regarding new governance options (MOU).

Further, the agencies adopted an Implementation Action Plan (IAP) designed by Management Partners to guide the staff consolidation. The ABAG and MTC senior staffs have been working on the IAP under the policy direction provided by our respective policy bodies. Over the past several months, MTC and ABAG staff have been working diligently to put together a contract for services (CS). A draft of the contract, which represents a consensus by both agency staff, is attached to this memorandum as Attachment A. The balance of this memorandum provides guidance for your policy review of the draft CS.

Background and Discussion

A. Policies and Principles for the Agencies' Support of Option 7 IAP

At the May 19, 2016 meeting of the Executive Board of ABAG, it approved Resolution 07-16 (Attachment B) expressing its policy support for Options 4 and 7 from Management Partners (Report). Resolution 07-16 also provided approval of the Option 7 IAP if MTC selected Option 7 (see below). Resolution 07-16 also placed specific conditions on ABAG's policy approval of Option 7 and the IAP, including principles to guide the IAP process.

At the May 25, 2016 meeting of the Commission, it approved Resolution 4245 (Attachment C) expressing its policy support for Option 7. MTC's policy support for Option 7 activated the provisions in ABAG's Resolution 07-16 relating to policy support for that option and the concomitant IAP. At its meeting on June 22, 2016, the Commission approved the Option 7 IAP.

There are differences in the policies and principles articulated in the Executive Board Resolution 07-16 and the Commission's Resolution 4245 that informed and conditioned their respective support for Option 7. The staffs have attempted to reflect both sets of policies and principles in the initial draft of the CS and the governance MOU that will follow soon.

B. ABAG and MTC Remain Separate and Independent Entities

Under Option 7, ABAG and MTC remain separate entities with their own statutory authorities and responsibilities, policy positions, assets, liabilities, revenues and debts. All existing and future business and programmatic risks remain with the agency conducting that business or program. The ABAG Local Collaboration Programs (LCPs) also retain their assets, liabilities and business risks. ABAG will have the same responsibility for the revenues and assets of the LCPs but MTC staff will be acting on ABAG's behalf in executing those responsibilities.

Based on direct discussions with CalPERS, we understand that: (1) even if ABAG has no employees, its contract with CalPERS remains valid and enforceable and (2) ABAG will continue to be responsible for the unfunded annual liability payments for pensions and for retiree medical benefits¹. We are seeking confirmation from CalPERS that there are no negative or unforeseen effects on ABAG's or MTC's pension liability as a result of the MTC/ABAG staff consolidation. It will be important to get this determination prior to approval of the contract for services. While we have made progress to this end, CalPERS has requested some additional information to aid in their response.

We recognize that having MTC staff provide services and programs to ABAG exposes MTC to third party claims arising out of those services and programs. We have addressed those risks by clearly articulating that ABAG retains those risks. In addition, we have configured the defense, indemnity, hold harmless and insurance provisions of the contract to manage these risks under a joint acquisition of commercial insurance coverage².

C. Developing Work Plans under the Contract for Services

Our initial efforts focused on the components of a straightforward contract for one entity to provide services to another. Therefore, there are provisions in the draft CS that provide procedures for (1) the development of budgets and programmatic work plans for ABAG and the LCPs³, (2) MTC to provide administrative and support services to ABAG and the LCPs⁴ and (3)

¹ See section 6.1 of the draft CS.

² See sections 9 and 10 of the draft CS.

³ See sections 3.2 and 4.1 of the draft CS.

⁴ See sections 3.3, 3.4 and 4.3 of the draft CS.

compensation to MTC for services provided⁵. These reflect basic and standard processes for negotiating a standard service contract. In addition, the procedures in the draft CS take into account ABAG's and the LCPs' current processes for policy level approval of their respective annual budgets and work plans.

We expect that many of the programmatic work plans for ABAG activities that do not overlap with MTC's activities will be at the sole discretion of ABAG or the LCPs. However, one purpose of Option 7 is to improve coordination between ABAG and MTC over joint programs such as the preparation of updates to the region's sustainable communities strategy, or Plan Bay Area. Since the preparation of the current update will have been mostly completed, the draft CS does not propose a specific process for coordination on work plan for the 2021 update. That will come later from discussions between the ABAG and MTC governing boards.

D. Developing Budgets under the Contract for Services

ABAG and the LCPs currently have revenues from multiple sources. Some of the revenues, mainly grants and subventions, may only be used for specific programs and products. The balance, largely ABAG's membership dues and reserves held by ABAG and the LCPs, are discretionary. We anticipate that the development of future budgets and work plans will continue to draw on both types of revenues, including grants and subventions to ABAG and/or the LCPs.

As you have been previously advised, the services provided by the consolidated staff will cost more than those provided by the current ABAG staff. We have identified a number of measures that will address a significant portion of the cost difference for the initial year. We are working diligently to provide a balanced budget, focusing on cost saving opportunities where feasible and minimizing the need for contributions from MTC reserves to address any remaining shortfalls.

The draft CS also recognizes that the cost differences for subsequent years need to be addressed. The draft CS includes a provision where ABAG acknowledges the need to identify additional revenues in the future⁶.

E. Executive Policy Oversight of Work under the Contract for Services

The IAP recognized the need for an executive level organizational structure at MTC that supports ABAG's policy bodies and members⁷. To that end, the draft CS includes key functions⁸ of the executive director and other key senior staff that support ABAG in its role as a Council of Governments and a joint powers authority and that preserve the essential relationships between the policymakers and members of ABAG and the LCPs and the consolidated staff⁹. These

⁵ See section 5 of the draft CS.

⁶ See section 4.2 of the draft CS.

⁷ See section B.6 at page 5 of the IAP and section 2.1 of the draft CS.

⁸ See section 2.3 of the draft CS.

⁹ See section 2.4 of the draft CS.

provisions will be coordinated with the provisions in the CS that better describe the executive organization structure and the Transition Plan.

We have also included a provision for ABAG, if necessary, to raise concerns about the quality and manner of work completed for it or the LCPs¹⁰. This is a mechanism for policy feedback after the work is performed. Finally, we note that any disputes regarding how the consolidated staff is responding to the policy input and programmatic needs of ABAG and the LCPs are also subject to the dispute resolution procedures in the draft CS.

The organization chart is still being finalized and will be included along with the Employee Transition Plan as an attachment to the final CS Plan (see discussion in section F of this memorandum).

F. Next Steps

Your input and comments will inform the final recommended CS and the following documents:

1) Attachments to the CS

- Transition Plan – the plan for transitioning individuals identified as current employees of ABAG who are expected to accept an offer of employment at MTC.
- Employee Organization Chart – a graphic representation of the hierarchic and functional relationships among the consolidated staff.


2) Memorandum of Understanding regarding governance options

We will also report on our discussions with CalPERS as developments occur.

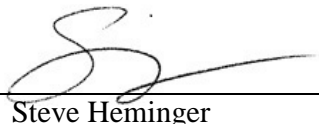
The proposed information meetings to seek input on the Draft CS are as follows:

- February 16: ABAG Executive Board Review of Draft Contract for Services
- February 24: Special Joint MTC Planning/ABAG Administration Committee Review of Draft Contract for Services

The schedule for approval of the CS and MOU will be updated based on the input at the February meetings and the progress of conversations with CalPERS.



Brad Paul



Steve Heminger

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¹⁰ See section 2.5 of the draft CS.

Draft February 13, 2017

CONTRACT FOR SERVICES

between

METROPOLITAN TRANSPORTATION COMMISSION

and

ASSOCIATION OF BAY AREA GOVERNMENTS

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CONTRACT FOR SERVICES

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

RECITALS

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

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

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

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

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

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

TERMS AND CONDITIONS

1. DEFINITIONS

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

ABAG Legacy Employees means the individuals identified in Section [5] of this Agreement, each of whom, as of the Effective Date, is currently an employee of ABAG and is expected, in accordance with the Employee Transition Plan, to accept an offer of employment at MTC.

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

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

Enterprise Board means the governing board of a LCP.

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

Bay Area Regional Energy Network (BayREN);

San Francisco Estuary Partnership (SFEP);

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

ABAG Finance Authority for Nonprofit Corporations (FAN);

ABAG Finance Authority (ABAG FA);

ABAG PLAN Corporation (PLAN);

ABAG Publicly Owned Energy Resources (POWER);

Shared Agency Risk Pool (SHARP); and

San Francisco Bay Restoration Authority (SFBRA).

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

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

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

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

The parties agree to use their best efforts to preserve, serve and secure the statutory powers and responsibilities of ABAG and the mission of ABAG as the region's Council of Governments following the Effective Date, and similarly to preserve, serve and secure the respective goals and missions of the LCPs. A list of ABAG's statutory responsibilities is attached as Exhibit [A] and may be revised to reflect changes to those responsibilities and powers made by the California Legislature without formal amendment of this contract. To ensure that the services provided under this Agreement serve the goals and missions of ABAG and the LCPs, the parties agree as follows:

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

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

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

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

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

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

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

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

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

3. SERVICES

3.1 Standard of Professional Care

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

3.2 Operating Budgets and Work Plans

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

3.3 Financial Services

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

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

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

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

3.4 Legal Services

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

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

3.5 Progress Reports

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

4. OPERATING BUDGETS AND WORK PLANS; STAFFING

4.1 Development and Approval

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

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

- (a) description of programmatic activities for that fiscal year;

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

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

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

Following consultation with ABAG and the FAN Executive Committee, MTC will administer the current FAN portfolio in runout mode such that there will be no new debt issuance under the FAN name. The consolidated staff working for MTC will, no later than _____, create a successor ABAG-affiliated conduit financing authority, which shall be a new legal entity with a new name and a new governing body (the ABAG Executive Board or its designee), to continue to meet the conduit financing needs of the region and of ABAG's member jurisdictions.

4.2 Revenues

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

4.3 MTC Staffing

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

5. COMPENSATION AND METHOD OF PAYMENT

5.1 Compensation

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

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

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

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

5.2 Overhead and Administrative Costs

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

5.3 Payment Procedure and Method

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

Payment to MTC will be made by wire transfer.

6. EMPLOYMENT OF ABAG LEGACY PERSONNEL

ABAG Legacy Employees are expected to become employees of MTC in accordance with the Employee Transition Plan. Each Transitioned Employee's general duties and responsibilities will be equivalent to his or her prior duties and responsibilities as an ABAG employee.

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

The following individuals are hereby identified as ABAG Legacy Employees:

[Insert List or attach schedule – include name, current ABAG title and program affiliation]

6.1 Pension Obligations and Other Employee Benefits

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

The parties hereby agree with respect to any and all Transitioned Employees that ABAG shall have no direct control over any such Transitioned Employees. Such Transitioned Employees shall be treated for all purposes as common law employees of MTC.

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

6.2 Changes in Employment Status

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

6.3 Employee Transition Plan

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

6.4 Plan for Staff Consolidation

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

6.5 LCP Staffing and Officers

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

6.6 SFEP Staff

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

6.7 Pension and Medical Benefits

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

7. RESPONSIBILITIES OF MTC PERSONNEL

7.1 Personnel

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

8. GOVERNANCE STUDY

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

9. RELEASE OF CLAIMS

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

10. INSURANCE AND RISK ALLOCATION

10.1 Engagement of Consultant(s)

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

- (a) Not more than 60 days after the Effective Date, MTC will initiate, by procurement procedures employed by MTC in the ordinary course of business, a request for proposals/qualifications (the "Solicitation") for the services described above and to assist and advise MTC in procuring and implementing the policies and practices set forth in subsection 10.2.

- (b) MTC staff will review responses to the Solicitation and evaluate them based on factors such as responsiveness, qualifications/reputation, and cost, and will select one or more preferred providers.
- (c) MTC staff will present the choice of the selected provider(s) to the MTC Administration Committee and the ABAG Finance and Personnel Committee for approval.

10.2 Insurance Policies

Upon retention of the consultant retained pursuant to subsection 10.1, MTC will work with the consultant to undertake the following:

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

10.3 Business and Programmatic Risks

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

11. NOTICES

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

To MTC:	Attention: Alix Bockelman Metropolitan Transportation Commission 375 Beale Street, Suite 800 San Francisco, CA 946105 Email: ABockelman@mtc.ca.gov
To ABAG:	Attention: ABAG President ABAG Vice President Chair, ABAG Finance Committee ABAG Administrative Committee members address: home address for each person Email: email address for each person cc: MTC Deputy Dir. for Local Gov't Services

12. DURATION OF AGREEMENT

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

13. DISPUTE RESOLUTION

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

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

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

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

- (b) If the joint MTC board and ABAG Executive Board cannot agree, the dispute shall be referred to binding arbitration using an arbitration board supplied by JAMS. Each party shall bear the costs and expenses incurred by it in connection with such binding arbitration. The cost shall be shared equally; provided, however, that should the arbitrator(s) find specific fault by one party, then that party shall bear the entire cost. The arbitration shall determine the final outcome of the dispute, including whether and when a termination of this Agreement may occur.

14. TERMINATION

14.1 Termination for Cause

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

Termination shall be effected by serving a thirty (30) day advance written notice of termination on the affected party, setting forth in detail the manner in which the affected party is in default. If the affected

party does not cure the breach or describe to the complaining party's satisfaction a plan for curing the breach within the thirty (30) day period, commencing on the date of receipt of the notice ("Cure Period"), the complaining party may terminate the Agreement for default, subject to the procedures set forth in Section 13, which shall first require dispute resolution as set forth in Section 13(a), and if unsuccessful, arbitration as set forth in Section 13(b). The final decision in arbitration shall determine whether and when termination shall occur. In the case of (i), if MTC is working diligently to cure the alleged failure of performance, the parties will extend the Cure Period by mutual agreement. The Cure Period may be extended a maximum of six (6) thirty day periods.

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

14.2 Notice of Termination

Notice will be given by Certified Mail or Personal Service to the address specified in Section 11.

14.3 Payment for Services Rendered Following Notice of Termination

MTC will be compensated for all work performed up to and including the date of termination of this Agreement, notwithstanding the delivery of any notice under this Section 14, provided that MTC will not be compensated for any work that is under dispute and identified in the notice provided under section 14.1.

15. CHOICE OF LAW

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

16. PARTIAL INVALIDITY

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

17. BENEFIT OF AGREEMENT

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

18. ENTIRE AGREEMENT; MODIFICATION

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

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

METROPOLITAN TRANSPORTATION
COMMISSION

ASSOCIATION OF BAY AREA
GOVERNMENTS

Jake Mackenzie, Chair

Julie Pierce, President

**ASSOCIATION OF BAY AREA GOVERNMENTS
EXECUTIVE BOARD**

RESOLUTION NO. 07-16

**ABAG SUPPORT FOR ABAG MTC MERGER STUDY RECOMMENDATION
OPTION 4 AND OPTION 7**

WHEREAS, the cities and counties of the Bay Area formed the Association of Bay Area Governments (ABAG) for the purposes of establishing a permanent forum for discussion and study of regional and subregional problems of interest and concern to them, developing policies and actions, and providing services and undertaking actions to address such problems; and

WHEREAS, for over 50 years, local jurisdictions have relied on ABAG, their Council of Governments (COG), to provide the staff support, resources, programs, and partnerships in a manner that provides local jurisdictions with significant input in developing and implementing regional and subregional initiatives, plans and programs, such as Plan Bay Area; and

WHEREAS, for decades now, the Metropolitan Transportation Commission (MPO) has conducted subregional and regional transportation planning and funding, working primarily through the Congestion Management Agencies (CMAs); and

WHEREAS, last fall MTC adopted Resolution 4210 that provided interim funding for ABAG's work on the update to Plan Bay Area while ABAG and MTC jointly hired a consultant to help them explore opportunities for greater collaboration up to, and including, full merger; and

WHEREAS, merging these two regional agencies has the potential to create new opportunities to bring more comprehensive, better integrated transportation and land use planning services to the Bay Area; and

WHEREAS, if ABAG becomes part of a larger, more financially secure, merged agency that preserves ABAG's autonomy, policy oversight and statutory regional responsibilities, there would be greater economic flexibility and security for ABAG programs, and guarantee that current ABAG employee and retiree benefits are protected; and

WHEREAS, MTC acknowledges the value of the COG to the region and its local jurisdictions, stakeholders and residents, and has made a commitment to preserving ABAG's statutory authority, programs and voice in regional policy decisions; and

WHEREAS, both ABAG and MTC proposes to negotiate the terms of a merger as equal partners with each bringing its own strengths, assets and programs to the negotiations.

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 07-16**

NOW, THEREFORE, BE IT RESOLVED, that the ABAG Executive Board expresses policy support for Option 4 (Create a New Regional Agency and Governance Model), and Option 7 (Enter into a Contract between ABAG and MTC to Consolidate Staff Functions under One Executive Director and Enter into an MOU to Pursue New Governance Options (Full Functional Consolidation)), and directs staff to:

- (a) Enter into a letter agreement¹ to continue MTC's financial support of ABAG's planning services pending development and execution of a *Contract for Services* and *MOU* to pursue new governance options with MTC.
- (b) Cooperate with MTC to conduct financial and legal analyses to determine the impact on both ABAG and MTC of a staff consolidation.
- (c) Enter into negotiations and establish a deadline for:
 - 1) A multi-year *Contract for Service* that consolidates MTC and ABAG staff under one executive director and provides staffing for all ABAG statutory duties and responsibilities as the region's COG;
 - 2) A *memorandum of understanding (MOU)* to pursue new governance options within a specified time period.
- (d) Commission/Board Involvement: Request Commission/Board Chairs and/or their representatives to work with respective agency staff, legal counsel and a project manager/facilitator on the *Contract for Service* and *MOU*.
- (e) Employee Relations Committee: Establish a joint employee/management committee with representatives from both MTC and ABAG to assist with the transition process.
- (f) Communications Plan: Document each agency's existing policy structure and responsibilities, and clarify intent to maintain them until and unless there is a successor governance structure; include this as part of a communications plan to Bay Area cities and counties

BE IT FURTHER RESOLVED that the ABAG Executive Board requests that the MTC Commission and the ABAG Administrative Committee and/or their representatives work with the Executive Directors, counsels and staffs of ABAG and MTC and a third party manager/facilitator on the *Contract for Service* and *MOU*.

BE IT FURTHER RESOLVED that ABAG Executive Board adopts the principles in Attachment A to this resolution to be applied to the implementation of Option 7.

¹ Items (a) through (e) are reflected in Sections A1-A6 of the AIP.

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 07-16**

BE IT FURTHER RESOLVED that the successor to the current Executive Director of MTC shall be appointed by, and report to, the ABAG Executive Board and the Commission of MTC.

FURTHER BE IT RESOLVED that the ABAG Executive Board acknowledges that the Action Implementation Plan (AIP), once it is finalized and adopted by ABAG and MTC, is meant to set forth a process to guide the respective agencies as we move forward with Option 7. It is intended as a tool that the agencies may use to help plan the process, and may need to be modified over time.

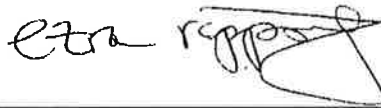
The foregoing was adopted by the Executive Board this 19th day of May, 2016.



Julie Pierce
President

Certification of Executive Board Approval

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 19th day of May, 2016.



Ezra Rapport
Secretary-Treasurer

Approved as To Legal Form



Kenneth K. Moy
Legal Counsel

ATTACHMENT A

Principles Applied When Implementing Components of Option 7

- A. The Council of Governments (COG) provides local jurisdictions with the staff support, resources and partnerships necessary for them to have significant input in developing and implementing regional plans such as Plan Bay Area. The COG operates with the clear understanding that all land use authority in California resides with cities and counties. Support for Option 7 is conditioned on the continuation of local engagement and participation in regional planning in the following manner:
- 1) Cities and counties are essential partners in regional planning.
 - 2) Regional planning incorporates a meaningful and transparent public engagement process.
 - 3) Regional land use planning is responsive to local land use planning to build high quality neighborhoods.
 - 4) In addition to transit and transportation planning, regional land use planning integrates other relevant planning fields, such as water, agriculture and open space, resilience, energy efficiency, climate change adaptation and mitigation, air quality, sea level rise, economic development, and social equity.
- B. The COG should have a voice in developing land use incentives designed to promote the construction of and acquisition/rehabilitation of housing units scaled to support the Bay Area economy.
- C. When integrating the ABAG Planning and Research Department, special attention should be made to retain its collaborative and holistic culture.
- D. In concert with any organizational changes, ABAG and MTC staff should engage in a deliberate process for integrating missions that address: 1) the function, management, mission, and vision of ABAG departments; 2) internal and external relationship maintenance; 3) decision-making structures; and 4) conflict resolution.
- E. ABAG and MTC should designate a Staff Merger committee of Board and Commission members that will provide guidance with respect to merger activities and changes. This committee should be informed by an organizational consultant familiar with the overlapping areas of ABAG and MTC administration. We do not believe important decisions need to be made immediately, and it would be helpful for a committee of elected officials to be in place for any discussion of issues among the staff. The ABAG Executive Board is generally supportive of the worker protection list requested by SEIU in its letter to the ABAG Administrative Committee dated May 3, 2016, subject to refinement of specific timing and implementation issues, and will refer this 10-point Worker Protection Plan from SEIU to the Employee Relations Committee called for in the Implementation Action Plan (IAP).

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 07-16**

Attachment B

- F. MTC administration should endeavor to understand and preserve ABAG's existing programs. Should MTC administration desire to make substantive changes, they must first consult with the ABAG Executive Board.

- G. The staff merger should include the transition of all ABAG staff. Savings and consolidation should take place through existing vacant positions, expected attrition opportunities in further reorganization, and through an organizational development plan approved by both ABAG and MTC.

- H. The ABAG Executive Board will need a management level staff person to act as a liaison to the new administration. The ABAG Board and the Executive Director of MTC should engage in a mutual process for the selection and retention of this liaison. The mechanism to accomplish this should be worked out as part of the IAP. This position will ensure that the ABAG Executive Board has an appropriate connection to staff so it can perform its policy oversight with autonomy.

ABSTRACT

MTC Resolution No. 4245

This resolution approves policy support for the Merger Study Option 7, consolidation of all staff functions of MTC and ABAG within MTC under one executive director and consideration of new governance options, suspends the multi-year funding framework between MTC and the Association of Bay Area Governments (ABAG) consistent with the full functional consolidation, and calls for a letter agreement to support ABAG's planning services through December 31, 2016 as the agencies work toward approval of a contract for services or until completion of the functional consolidation, whichever occurs first.

Further discussion of this subject is contained in Commission memoranda dated May 18, 2016 and materials from the Special Joint MTC Planning and ABAG Administrative Committees from January through April 2016.

Re: Policy Support for Consolidation of MTC and ABAG Staff Functions within MTC and Consideration of New Governance Options

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4245

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to California Government Code Section 66500 *et seq.*; and

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

WHEREAS, the Association of Bay Area Governments (ABAG) was created in 1961 and serves as the Council of Governments for the region; and

WHEREAS, California Government Code § 65080 *et seq.* requires MTC to prepare and update a long-range Regional Transportation Plan (RTP), including a Sustainable Communities Strategy (SCS); and

WHEREAS, Senate Bill 375 (Steinberg, 2008) requires that each metropolitan planning organization in California prepare and adopt an SCS to bring together transportation and land use planning; and

WHEREAS, in the case of the Bay Area there is a special section in the law (Government Code 65080 (b)(2)(B)) that assigns responsibility for preparing the various elements of the SCS to either MTC, ABAG or both, based on the traditional roles each agency has historically performed; and

WHEREAS, the current bifurcated structure between the MTC and ABAG planning departments leads to significant duplication, inefficiencies and missed opportunities in preparing the SCS and to best serve the needs of the Bay Area and its local communities; and

WHEREAS, on October 28, 2015, MTC approved MTC Resolution No. 4210 to integrate the MTC and ABAG planning departments on July 1, 2016 and also to expedite the joint hiring with ABAG of a consultant to conduct a Merger Study and Merger Implementation Plan (MIP) by June 1, 2016 that would explore further integration, up to and including institutional merger between MTC and ABAG; and

WHEREAS, MTC Resolution 4210 stated that in the event that ABAG and MTC approve a MIP before July 1, 2016, the functional consolidation of planning departments shall be pre-empted and principles 2-10 of the resolution shall be void; and

WHEREAS, Management Partners was hired and has completed a Merger Study Options Analysis and Recommendations Report (“Merger Study”) that includes seven distinct options; and

WHEREAS, on April 22, 2016, the Joint MTC Planning and ABAG Administrative Committees recommended Option 7 for consideration by the MTC and ABAG policy boards; now, therefore, be it

RESOLVED, that MTC expresses policy support for the Merger Study’s Option 7, consolidation of all staff functions of MTC and ABAG within MTC under one executive director and the consideration of new governance options, as a near-term approach to better administer the significant and challenging responsibilities set forth in Senate Bill 375; and be it further

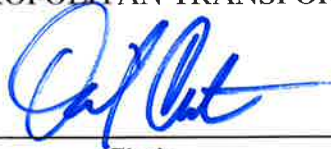
RESOLVED, that MTC directs staff to present a letter agreement for approval at the June 22, 2016 Commission meeting that would continue financial support for ABAG’s planning services through December 31, 2016 as the agencies work toward approval of a Contract for Services or until completion of the functional consolidation, whichever occurs first; and be it further

RESOLVED, that MTC suspends the MTC/ABAG Funding Framework included as Attachment B to MTC Resolution 4210 pending development and execution of the aforementioned Contract for Services; and be it further

RESOLVED, that MTC directs staff to initiate financial and legal analyses to determine the impact on both MTC and ABAG of a staff consolidation; and be it further

RESOLVED, that MTC acknowledges that the proposed Implementation Action Plan, once finalized and adopted by ABAG and MTC, is meant to set forth a more comprehensive process to guide the respective agencies as we move forward to implement a full staff consolidation of ABAG and MTC within the MTC organizational structure.

METROPOLITAN TRANSPORTATION COMMISSION



Dave Cortese, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, California on May 25, 2016.

To: ABAG Executive Board
Fr: Kenneth Moy, Legal Counsel
Dt: February 3, 2017
Re: Executive Management Team, Contract for Services and Government Code Section 1090

A. Summary and Recommended Action

There are statutory prohibitions against conflicts of interest in the creation of government contracts as described in the balance of this memorandum. The executive management team (comprised of existing ABAG employees) is negotiating the Contract for Services with the Metropolitan Transportation Commission (MTC) to implement Option 7 (CS). The statutory prohibitions may apply to this activity. To avoid the potential conflict, I recommend that the ABAG Executive Board accept this memorandum and direct that the action be reflected in the minutes for the meeting.

B. Analysis

California Government Code Section 1090¹ (hereafter, all references to 'sections' are to this code) codifies the common law principle that bars government officials or employees from participating in the making of a contract in which they have a financial interest. Section 1091 provides that an official's or employee's 'remote interest' in a contract does not violate section 1090. Section 1091.5 provides that an officer or employee does not have a financial interest in a contract if his or her interest is one that is described in one of the provisions in that section. Section 1091.5 (a)(9) describes one such interest as follows:

*That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, **provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.***

Finally, under section 1092², any contract made in violation of section 1090 can be voided by any party to the contract or by suit filed within four years of the discovery of the violation.

¹ The section states in pertinent part as follows: *Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.*

² (a) *Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.*

(b) *An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).*

In *Lexin v Superior Court*, 47 Cal. 4th 1050; 222 P.3d 214; 103 Cal. Rptr. 3d 767; 2010 Cal. LEXIS 115, the California Supreme Court considered the scope and applicability of section 1091.5(a)(9) and concluded as follows:

*If a contract an official considers in his or her official capacity is with the official's government employer and involves direct financial gain, the official is prohibited from participating under section 1090. **If the contract involves no direct financial gain, but is with or affects the official's own department, the official's interest is a remote interest under section 1091 subdivision (b)(13) and subject to the disclosure and recusal requirements of section 1091 . . .*** (emphasis added)

ABAG's executive management team (Brad Paul, Acting Executive Director, Courtney Ruby, Director of Finance and Administrative Services and Kenneth Moy, Legal Counsel) have been charged with the responsibility for negotiating the CS. The CS affects the departments in which each of us is employed by ABAG. However, for the reasons noted below, our participation in the the CS does not involve direct financial gain to any of us.

If the CS provides for a consolidated staff that includes Paul and Ruby, MTC will make final salary offers to Paul and Ruby based on previously established MTC salary ranges for equivalent positions and those offers will not subject to negotiation by the parties. I will not be part of the consolidated staff and will not be receiving any compensation under the CS. Thus, this arrangement meets the test set forth in *Levin* for a 'remote interest' that does not create a conflict of interest.

As noted above, section 1091 requires that the 'remote interest be disclosed to the Executive Board and be noted in its official records.

C. Recommended Actions

In light of the above, I recommend the ABAG Executive Board accepts this memorandum as notice that each member of the executive management team has a 'remote interest' in the CS and directs that the acceptance of this memorandum be reflected in the minutes of the meeting.

CC: Brad Paul
Courtney Ruby

Executive Board

Representatives

Julie Pierce, Councilmember, City of Clayton—*President*

David Rabbitt, Supervisor, County of Sonoma—*Vice President*

David Cortese, Supervisor, County of Santa Clara—*Immediate Past President*

Candace Andersen, Supervisor, County of Contra Costa

Len Augustine, Mayor, City of Vacaville

Annie Campbell Washington, Councilmember, City of Oakland

David Canepa, Supervisor, County of San Mateo

Cindy Chavez, Supervisor, County of Santa Clara

Lan Diep, Councilmember, City of San Jose

Pat Eklund, Councilmember, City of Novato

Leon Garcia, Mayor, City of American Canyon

Liz Gibbons, Mayor, City of Campbell

Lynette Gibson McElhaney, Councilmember, City of Oakland

Abel Guillen, Councilmember, City of Oakland

Pradeep Gupta, Mayor, City of South San Francisco

Scott Haggerty, Supervisor, County of Alameda

Barbara Halliday, Mayor, City of Hayward

Erin Hannigan, Supervisor, County of Solano

Dave Hudson, Vice Mayor, City of San Ramon

Sergio Jimenez, Councilmember, City of San Jose

Jane Kim, Supervisor, City and County of San Francisco

Edwin Lee, Mayor, City and County of San Francisco

Wayne Lee, Mayor, City of Millbrae

Jake Mackenzie, Mayor, City of Rohnert Park

Nathan Miley, Supervisor, County of Alameda

Karen Mitchoff, Supervisor, County of Contra Costa

Raul Peralez, Councilmember, City of San Jose

Dave Pine, Supervisor, County of San Mateo

John Rahaim, Planning Director, City and County of San Francisco

Belia Ramos, Supervisor, County of Napa

Dennis Rodoni, Supervisor, County of Marin

Todd Rufo, Economic and Workforce Development Director, City and County of San Francisco

Greg Scharff, Mayor, City of Palo Alto

Trish Spencer, Mayor, City of Alameda

William Kissinger, Board Member, San Francisco Bay Regional Water Quality Control Board—
Advisory Member

Alternates

Jesse Arreguin, Mayor, City of Berkeley

Sylvia Arenas, Councilmember, City of San Jose

Laurel Arvanitidis, Industry Programs, Economic and Workforce Development, City and County of San Francisco

Mary-Lynne Bernald, Councilmember, City of Saratoga

Elizabeth Brekhus, Councilmember, City of Ross

Monica Brown, Supervisor, County of Solano

Diane Burgis, Supervisor, County of Contra Costa

Tom Butt, Mayor, City of Richmond

Catherine Carlton, Councilmember, City of Menlo Park

Keith Carson, Supervisor, County of Alameda

Chris Clark, Councilmember, City of Mountain View

Julie Combs, Councilmember, City of Santa Rosa

Damon Connolly, Supervisor, County of Marin

Diane Dillon, Supervisor, County of Napa

John Dunbar, Mayor, Town of Yountville

Nicole Elliott, Director of Legislative and Governmental Affairs, City and County of San Francisco

John Gioia, Supervisor, County of Contra Costa

Susan Gorin, Supervisor, County of Sonoma

Dan Kalb, Councilmember, City of Oakland

Johnny Khamis, Councilmember, City of San Jose

Tam Nguyen, Councilmember, City of San Jose

AnMarie Rodgers, Senior Policy Advisor, Planning, City and County of San Francisco

Pedro (Pete) Sanchez, Mayor, City of Suisun City

Joseph Simitian, Supervisor, County of Santa Clara

Roy Swearingen, Mayor, City of Pinole

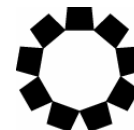
Richard Valle, Supervisor, County of Alameda

Mike Wasserman, Supervisor, County of Santa Clara

Terry Young, Chair, San Francisco Bay Regional Water Quality Control Board—*Advisory Member*

2/14/17

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MEETING SCHEDULE 2017

Approved by the Executive Board: November 17, 2016

For meeting date and time and location, see meeting notice, agenda and attachments available at <http://www.abag.ca.gov/>

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

General Assembly

Date: Monday, January 30
10:00 a.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

General Assembly and Business Meeting

Date: Thursday, May 11
Time: 10:00 a.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

Executive Board

Dates: Thursday, January 19
Thursday, February 16
Thursday, March 16
Thursday, May 18
Thursday, July 20
Thursday, September 21
Thursday, November 16

Time: 7:00 p.m. to 10:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Legislation and Governmental Organization Committee

Dates: *See Executive Board Schedule*

Time: 3:30 p.m. to 5:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Finance and Personnel Committee

Dates: *See Executive Board Schedule*

Time: 5:00 p.m. to 6:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Board Room, San Francisco

Administrative Committee

Dates: *Special meetings scheduled as needed.*

Regional Planning Committee

Dates: Wednesday, February 1
Wednesday, April 5
Wednesday, June 7
Wednesday, August 2
Wednesday, October 4
Wednesday, December 6

Time: 12:00 p.m. to 3:00 p.m.

Location: Bay Area Metro Center, 375 Beale Street, Yerba Buena Conference Room,
San Francisco

Contact: Wally Charles, Administrative Secretary, Planning, (415) 820 7993,
wallyc@abag.ca.gov