



CALL AND NOTICE

CALL AND NOTICE OF A SPECIAL MEETING OF THE ADMINISTRATIVE COMMITTEE OF THE ASSOCIATION OF BAY AREA GOVERNMENTS

As Chair of the Administrative Committee of the Association of Bay Area Governments (ABAG), I am calling a special meeting of the ABAG Administrative Committee as follows:

Special Meeting

Wednesday, October 4, 2017, 12:00 p.m.

Location:

Bay Area Metro Center
Golden Gate Conference Room 8102
375 Beale Street
San Francisco, California

Teleconference Locations:

City of San Jose, 200 E. Santa Clara Street, Conference Room 1854, San Jose, California
Sheraton Hotel, 745 Baywood Drive, Petaluma, California

Committee Members:

Julie Pierce, Councilmember, City of Clayton—*Chair*
David Rabbitt, Supervisor, County of Sonoma—*Vice Chair*
Cindy Chavez, Supervisor, County of Santa Clara
David Cortese, Supervisor, County of Santa Clara—*Ex officio*
Pat Eklund, Councilmember, City of Novato
Pradeep Gupta, Mayor, City of South San Francisco
Scott Haggerty, Supervisor, County of Alameda
Karen Mltchoff, Supervisor, County of Contra Costa
Raul Peralez, Councilmember, City of San Jose
Greg Scharff, Mayor, City of Palo Alto

The ABAG Administrative Committee may act on any item on this agenda.

Agenda and attachments available at <http://abag.ca.gov/meetings/administrative.html>

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

1. CALL TO ORDER / ROLL CALL / CONFIRM QUORUM

ABAG Administrative Committee

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2. PUBLIC COMMENT

INFORMATION

3. ANNOUNCEMENTS

INFORMATION

4. AUTHORIZATION FOR ABAG PRESIDENT TO SIGN A JOINT REPRESENTATION AGREEMENT SIGNIFYING ABAG'S UNDERSTANDING THAT MTC OFFICE OF GENERAL COUNSEL JOINTLY REPRESENTS MTC AND ABAG AND CONTAINING AUTHORIZATION TO DRAFT/REVISE DOCUMENTS PERTAINING TO LOCAL COLLABORATION PROGRAMS

ACTION

5. REPORT ON STATUS OF ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (ABAG FAN) AND ADVANCING CALIFORNIA FORWARD AUTHORITY (ACFA)

INFORMATION

6. ADJOURNMENT

Members of the public shall be provided an opportunity to directly address the ABAG Administrative Committee concerning any item described in this notice before consideration of that item.

Agendas and materials will be posted and distributed for this meeting by ABAG staff in the normal course of business.

Submitted:



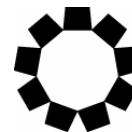
Julie Pierce
Chair, Administrative Committee

Date Submitted: October 2, 2017

Date Posted: October 2, 2017

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

AGENDA

ADMINISTRATIVE COMMITTEE

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ACTION

Attachment: Memo Joint Representation Agreement

5. REPORT ON STATUS OF ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (ABAG FAN) AND ADVANCING CALIFORNIA FORWARD AUTHORITY (ACFA)

INFORMATION

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

Attachment: Chart ACFA

6. ADJOURNMENT

The next meeting of the ABAG Administrative Committee will be announced.

Submitted:



Steve Heminger
Executive Director

Date Submitted: October 2, 2017

Date Posted: October 2, 2017

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: October 2, 2017

To: ABAG Administrative Committee

From: ABAG President

Subject: **AUTHORIZATION FOR ABAG PRESIDENT TO SIGN A JOINT REPRESENTATION AGREEMENT SIGNIFYING ABAG'S UNDERSTANDING THAT MTC OFFICE OF GENERAL COUNSEL JOINTLY REPRESENTS MTC AND ABAG AND CONTAINING AUTHORIZATION TO DRAFT/REVISE DOCUMENTS PERTAINING TO LOCAL COLLABORATION PROGRAMS**

Executive Summary

Effective July 1, 2017 the Association of Bay Area Governments (ABAG) staff was consolidated with the Metropolitan Transportation Commission (MTC) staff pursuant to the Contract for Services, dated as of May 30, 2017, between ABAG and MTC (CS). The CS provides in Section 3.4 that the MTC Legal Department (Office of General Counsel, or OGC) shall provide general legal support services to ABAG and the Local Collaboration Programs (LCPs). Section 3.4 further provides, "If ABAG, a LCP or MTC determines in good faith that an actual or potential conflict of interest would exist if 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." Since July 1 MTC OGC has been tasked by management with drafting documents and assisting the consolidated MTC staff in implementing the terms of the CS. These tasks include review and/or preparation of memoranda of understanding, joint powers agreements, contracts, amendments and other legal documents for ABAG and the LCPs. As part of MTC OGC's performance of such assignments, MTC has copied Kenneth Moy, asked questions of him when necessary and generally kept him apprised of work affecting ABAG and the LCPs.

MTC OGC has asked me to sign an Agreement officially memorializing this arrangement and disclosing that the arrangement reflects a "joint representation" wherein a lawyer represents more than one client in the same matter. MTC will be asked to sign a similar Agreement. As part of the California Rules of Professional Responsibility, MTC OGC is disclosing the advantages and disadvantages of joint representation, any actual conflicts of interest that MTC OGC, in its judgement, might perceive, and any potential conflicts that it, in its judgement, can identify. I note that under Section 3.4 of the CS, ABAG and the LCPs have the opportunity to raise actual or potential conflicts of interest and obtain separate legal counsel. Joint representation has the advantage of providing efficient and coordinated services to clients with identical or very closely aligned interests, at less expense than if each retained separate

Joint Representation Agreement

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counsel. On the other hand, it is at least conceivable that an attorney representing more than one client simultaneously might emphasize the interest of one client over the other, despite his or her best efforts not to do so.

MTC OGC notes in its communication that any information shared by ABAG would be open to communication with MTC and vice versa and that there would be no attorney client privilege vis-à-vis the other. In addition, ABAG would be precluded from disqualifying MTC in the future from having OGC represent MTC, in the event an actual conflict were to emerge. ABAG retains full right under the CS to retain its own separate counsel. Finally MTC OGC communicated to me that ABAG should seek independent legal advice before signing the document.

Recommended Action

I recommend proceeding with execution of the Agreement, subject to outside counsel's affirmative advice to do so and subject to the Administrative Committee authorizing the hiring of outside counsel to advise on the appropriateness of entering into the Agreement.



Julie Pierce

Advancing California Financing Authority (ACFA): Update

- **Background**

- **April 2017**

- Initial discussion of new financing authority with FAN Executive Committee

- **May**

- Follow up with Executive Committee
- Initial discussions ABAG Executive Board

- **June**

- Direction to authorize JPA by October 31

- **Update**

- August: Draft of revised JPA
- September: MTC final draft
 - Consistent with existing MTC/BATA JPA arrangements
 - Similar powers, duties and accounting practices

- **Presentation**

- October: FAN Executive Committee review
- November: FAN / ABAG approval
- December approvals:
 - Bylaws
 - Fees
 - Estimated budget
 - Processing rules
- January 2018: Initial advertising for deals