

**JOINT POWERS AGREEMENT**  
**SFBRA/ABAG/SCC**  
**PROPOSED RECITALS AND TERMS**  
**March 19, 2014**

**RECITALS**

- A. The State Coastal Conservancy is a state agency established pursuant to Division 21 of the Public Resources Code. Chapter 4.5 of Division 21 of the Public Resources Code authorizes the Conservancy to award grants in the nine-county San Francisco Bay Area to help achieve Division 21's goals for the San Francisco Bay Area, which include the protection, restoration and enhancement of natural habitats and improved public access to and around San Francisco Bay.
- B. The San Francisco Bay Restoration Authority is a regional entity established by the San Francisco Bay Restoration Authority Act, Government Code section 66700 et seq. and charged with raising and allocating funds for the protection and enhancement of tidal wetlands and other wildlife habitat in and surrounding the San Francisco Bay and for related public access and flood protection.
- C. The Association of Bay Area Governments is a joint powers authority of the cities and counties of the nine-county San Francisco Bay Area that seeks to enhance the quality of life in the San Francisco Bay area and that operates a variety of programs including several that award grants for protection and enhancement of San Francisco Bay.
- D. To help achieve the Division 21 goals for the San Francisco Bay Area, Conservancy staff have participated in numerous collaborative efforts of federal, state and local government agencies to prepare plans that reflect the mutual goals of these agencies for protection, enhancement and restoration of San Francisco Bay and associated public access and flood management. The resulting plans include:
- San Francisco Baylands Ecosystem Habitat Goals and its Climate Change Update,
  - San Francisco Bay Subtidal Habitat Goals,
  - San Francisco Estuary Partnership's Comprehensive Conservation and Management Plan,
  - San Francisco Bay Region's Integrated Regional Water Management Plan,
  - South Bay Salt Pond Restoration Plan and South Bay Shoreline Study, and
  - San Francisco Bay Trail Plan.
- E. The California Natural Resources Agency has developed several plans that include statewide goals for flood protection and for the protection, enhancement and restoration of habitats. The Conservancy's implementation of Division 21 helps achieve the goals set forth in these plans, which include:

- California Water Action Plan (2014)
  - State Wildlife Action Plan (2005, update due in 2015)
  - Flood Future Report (2013)
  - State of the State's Wetlands Report (2010)
- F. The Authority desires to benefit from ABAG and Conservancy expertise in planning and achieving restoration, enhancement and protection of San Francisco Bay. The Conservancy desires to have a role in the allocation of funds raised by the Authority for purposes of furthering the goals for the San Francisco Bay Area as set forth in Chapter 4.5 of Division 21, which will help the California Natural Resources Agency achieve its broader statewide goals. ABAG desires to assist the Authority to ensure its successful implementation of the San Francisco Bay Restoration Authority Act. The parties also desire to maximize efficiency and reduce administrative redundancy in order to direct as much of the available funding as possible toward planning and implementation of projects for the protection, enhancement and restoration of San Francisco Bay and associated public access and flood protection.

## **TERMS**

### **1. Parties to the Agreement**

- San Francisco Bay Restoration Authority ("SFBRA")
- Association of Bay Area Governments ("ABAG")
- California State Coastal Conservancy ("SCC")

### **2. Purposes of the Agreement**

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

### **3. Staffing Responsibilities for SFBRA Act Implementation**

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

- **Executive Officer:** SCC shall provide a staff member to perform Executive Officer services for the SFBRA; Executive Officer services shall include preparation of a strategic plan and budget; oversight of compliance with special tax measure requirements and other revenue restrictions; management of SFBRA public meetings; coordination of the SFBRA Advisory Committee; management of external communications; consultation with ABAG; and direction of program staff.
- **Program Staff:** SCC and ABAG shall provide staff members to perform program staff services for the SFBRA under the direction of the Executive Officer; program staff services shall include: development of procedures for grant evaluation and prioritization, review of applications, preparation of grants and contracts, oversight of projects, and review of invoices. SCC and ABAG will decide jointly which program staff functions will be performed by ABAG taking into account ABAG expertise. ABAG is expected to contribute approximately 20-25% of program staff.
- **Treasurer/Fiscal Agent:** ABAG shall provide a financial officer to act as treasurer to the SFBRA. The treasurer shall receive, safeguard, invest, and disburse funds; collect taxes from counties; perform fiscal audits; provide accounting; prepare and submit internal and external financial reports; make recommendations regarding risk management and procure adequate insurance on behalf of SFBRA.
- **Legal:** SCC shall provide a staff attorney to advise the SFBRA Governing Board, the Executive Officer and the program staff on SFBRA matters. Attorney services shall include preparation of oral and written legal advice, review of staff recommendations, and retention and management of outside counsel to represent SFBRA in the event of litigation. ABAG will provide legal services in the event of a conflict of interest pertaining to the SCC staff attorney that is not waived by SFBRA and SCC.
- **Clerk of the Board:** SCC shall provide a staff member to serve as the meeting clerk for the SFBRA. The meeting clerk services shall include: maintenance of the official records of SFBRA, preparation of meeting notices and agendas, notifying Governing Board members of FPPC filing requirements and maintaining FPPC filings, and providing clerical and logistical support to Governing Board members.
- **Information Technology:** ABAG shall maintain and manage the SFBRA website in accordance with written protocols and procedures.

#### 4. Date Parties Assume Their Obligations

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

**5. Duration**

- JPA remains in effect until January 1, 2029; can be extended by written agreement of the parties.
- SFBRA can terminate JPA upon 180 days written notice to SCC and ABAG.
- ABAG and SCC can withdraw from the JPA upon 180 days written notice; remaining parties may amend agreement to reallocate responsibilities, add other parties, or terminate.

**6. Payment**

- Staff services or other allowable costs incurred by the parties after a revenue measure passes (even if it is not effective immediately) are eligible for reimbursement by the SFBRA; staff services or other costs incurred by the parties before the measure passes, or if it fails to become effective, are the sole responsibility of the entity incurring the costs.
- SFBRA will reimburse ABAG and SCC for their actual costs in carrying out responsibilities under this agreement, incurred after passage of the measure, consistent with a budget approved in advance by the SFBRA Governing Board. Actual costs include costs of contracts for goods and services, staff costs at fully burdened rates for each applicable job classification, and travel essential to carrying out responsibilities under this agreement. ABAG and SCC will promptly notify SFBRA's Governing Board if costs may exceed the budget. Such notice will include proposals for reducing costs and/or an estimate of the exceedances. Exceedances will be paid only if the budget is amended to include them.

**7. Indemnification**

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

**8. Audits and Accountability**

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

- ABAG will fulfill SFBRA's statutory obligation to provide for annual financial reports and to make copies of the annual financial reports available to the public. (Govt. Code 66705(b).)
- SFBRA may order independent audits.
- SCC will perform its responsibilities in accordance with applicable laws, the SFBRA enabling law and guidelines created by SFBRA.

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

- The parties will cooperate and coordinate to ensure maximum efficiency, economy and quality of support for the SFBRA. Coordination will include regular communication between SCC and ABAG staff regarding management and policy issues, as well as how effectively the agencies are working together and satisfying their responsibilities under this agreement.
- ABAG will provide SCC monthly summaries of SFBRA fund balances, interest, income, and expenditures, including allocation among subaccounts, if any.
- SCC will provide ABAG quarterly projections of cash needs.

**10. Procedures**

- SCC will draft contracting process and other necessary procedures for approval by SFBRA Governing Board.

**11. Participation Requirements**

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

**12. Amendment**

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