

**Special Teleconference Meeting of the
Executive Committee of the Board of Directors of the
ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**
Offices of the Association of Bay Area Governments
Bay Area Metro Center
Room 8302 (Tomales)
375 Beale Street – San Francisco, CA

June 29, 2016 • 10:30 AM

Teleconference Locations:

Chuck Lomeli
Treasurer/Tax Collector
Solano County
County Government Center
675 Texas Street, Suite 1900
Fairfield, CA 94533

Jonathan Kadlec
Assistant Treasurer-Tax Collector
Sonoma County
County Fiscal Building
585 Fiscal Drive, Suite 100
Santa Rosa, CA 95403

Paul McDonough
Securities Analyst
Santa Clara County
County Government Center
70 West Hedding Street,
E. Wing, 2nd Floor
San Jose, CA 95110

Russell Watt
County Treasurer
Contra Costa County
625 Court Street, Room 100/102
Martinez, CA 94553.

REVISED
AGENDA

1. Call to Order (*Introductions and confirm quorum*).
2. Public Comment.
- 3.* Minutes of the Authority Executive Committee Meeting of May 4, 2016.
- 4.* Consideration of **Resolution 16-03** approving and authorizing the execution of an Amendment to the Loan Agreement for the Authority's Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A.

* Enclosures

1

- 5.* Consideration of **Resolution 16-04** authorizing Amendment to the Indenture of Trust relating the Authority's Multifamily Housing Revenue Bonds (Terracina at Elk Grove) 2008 Series A.
- 6.* Presentation and adoption of the budget for the ABAG Finance Authority for Nonprofit Corporations for Fiscal Year 2016-17.
- 7.* Presentation and acceptance of status report on adoption and implementation of internal controls post-embezzlement.
- 8.* Presentation and acceptance of status report on proposed consolidation of the staffs of the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) and potential impacts on the ABAG Finance Authority for Nonprofit Corporations.
- 9.* Presentation and authorization of a Contract for Services with Sheelagh Flanagan for the period from July 1, 2016 to December 31, 2016 in an amount not to exceed One Hundred Thousand Dollars (\$100,000).
- 10.* Presentation and authorization of an Amendment to the Contract for Services with Charlie Adams that extends the term of the contract from June 30, 2016 to June 30, 2017 and increases the amount payable under the contract from Thirty Thousand Dollars (\$30,000) to Ninety Thousand Dollars (\$90,000).
11. Other business.
12. Adjourn

The Committee may take any action on any item on this agenda

This agenda and related materials may be found at: <http://www.abag.ca.gov/meetings/financeauthority.html>

**Teleconference Meeting of the
Executive Committee of the Board of Directors of the
ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS
A Joint Powers Authority of California Cities and Counties
Offices of the Association of Bay Area Governments
Joseph P. Bort MetroCenter - Conference Room A
101 Eighth Street - Oakland, CA**

SUMMARY MINUTES

Wednesday 4 May 2016

Members & Alternates Present

Chuck Lomeli
Jonathan Kadlec
Paul McDonough
Belinda Zhu

County of Solano
County of Sonoma
County of Santa Clara
County of Contra Costa

(All Above Committee Members attended by phone.)

Authority Staff

Ezra Rapport, ABAG Executive Director/President to the Authority
Kenneth Moy, ABAG Legal Counsel/Acting General Counsel to the Authority

Invited Presenters & Guests

Stephen Melikian, Jones Hall
Francis Ngore, ABAG Interim Assistant Finance Director

Valley Montessori School:

- Ann Clark, Head of School and Angela Zellmer, CFO, Valley Montessori School
- Joshua Winter, Western Solutions Inc.
- Andrea de la Fuente, Vice President, U.S. Bancorp Municipal Securities Group
- Michael Melliére and Ben Kitto, Ice Miller

Morgan Autism Center:

- Brad Boardman, Executive Director and Jerry Stasch, Business Manager Morgan Autism Center

- Joshua Winter, Western Solutions Inc.
- Kevin Herr, BBVA Compass Bank
- Michael Melliere and Ben Kitto, Ice Miller

1. Call to Order

The meeting was called to order by Chair Lomeli at 10:33 a.m.

2. Public Comment

None.

3. Executive Committee Minutes

The Minutes of the Authority Executive Committee Meetings of March 30, 2016 were approved. /M/ Kadlec /S/ McDonough/ roll call – Lomeli, Kadlec, McDonough and Zhu ayes/ 0 nay.

4. Consideration of **Resolution 16-01** authorizing and approving the 2016 Supplemental Indenture between ABAG Finance Authority for Nonprofit Corporations and U.S. Bank National Association, as Trustee Relating to \$7,180,000 ABAG Finance Authority for Nonprofit Corporations Educational Facilities Refunding Revenue Bonds, Series 2012 (Valley Montessori School).

The Committee received reports from Valley Montessori School, Western Solutions Inc, U.S. Bancorp Municipal Securities Group, Ice Miller and Jones Hall re changes to the underlying transaction contemplated by the 2016 Supplemental Indenture. Members of the group responded to questions from committee members. /M/ McDonough /S/ Kadlec / roll call – Lomeli, Kadlec, McDonough and Zhu ayes/ 0 nay.

5. Consideration of **Resolution 16-02** authorizing up to Ten Million Five Hundred Thousand Dollars (\$10,500,000) for Morgan Autism Center.

The Committee received reports from Morgan Autism Center, Western Solutions Inc, BBVA Compass Bank, Ice Miller and Jones Hall re the proposed project and financing. Members of the group responded to questions from committee members. /M/ McDonough /S/ Kadlec / roll call – Lomeli, Kadlec, McDonough and Zhu ayes/ 0 nay.

6. Other Business of the Authority.

There being no other business, Chair Lomeli adjourned the meeting at 10:59 a.m.

Respectfully submitted,

Kenneth Moy
Acting Secretary

To: Executive Committee
ABAG Finance Authority for Nonprofit Corporations (Authority)

Fr: Kenneth Moy
Acting General Counsel

Dt: June 21, 2016

Re: Amendment to the Loan Agreement for Multifamily Housing Revenue Bonds
(Palo Alto Gardens Apartments), Series 1999A.

Recommended Action: Adopt Resolution 16-03 approving and authorizing execution of the First Amendment to Loan Agreement for the ABAG Finance Authority for Nonprofit Corporations' Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A (Bonds).

Description and Summary: MP Palo Alto Gardens LLC (Borrower), the current owner of 156 unit Palo Alto Gardens Apartments (Apartments), the project financed under the Bonds, has secured a Community Development Block Grant loan (CDBG Loan) from the City of Palo Alto to finance improvements to the Apartments. Borrower can enter into the CDBG loan if the following conditions are met:

- (a) Secure consent of the holders of at least sixty percent (60%) in the principal amount of the outstanding Bonds.
- (b) Amend the Loan Agreement among ABAG FAN, the Trustee and the Borrower to allow a second loan to be secured by the Apartments without extending the time for payment of, or reducing the amount due and payable on, the Bonds.
- (c) Obtain an opinion of Bond Counsel to the effect that the amendment will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or conformance of the Bonds and the Apartments with the laws of the State of California relating to the Bonds (Bond Counsel Opinion).

The First Amendment to Loan Agreement and the form of Bond Counsel Opinion meet the conditions set forth above.

As acting General Counsel to the Authority, I affirm that (a) the Indenture and the Loan Agreement are in full force and effect (b) there have been no amendments of or supplements to either document, and (c) the Authority has fully complied with all of its obligations under both documents. Therefore, there is no legal impediment to the

Authority's adoption of Resolution 16-03 or to its execution of the First Amendment to Loan Agreement.

The CDBG Loan documents are available for inspection.

Attachments:

- A. Resolution 16-03
- B. Request for Consent of Bondowners
- C. First Amendment to Loan Agreement
- D. Bond Counsel Opinion

RESOLUTION NO. 16-03

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

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN
AMENDMENT TO THE LOAN AGREEMENT FOR THE AUTHORITY'S
MULTIFAMILY HOUSING REVENUE BONDS (PALO ALTO GARDENS
APARTMENTS), SERIES 1999A**

RESOLVED, by the Executive Committee of the Board of Directors (the "Board") of the ABAG Finance Authority for Nonprofit Corporations (the "Authority"), as follows:

WHEREAS, the Authority issued its Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A (the "Bonds") pursuant to an Indenture of Trust, dated as of April 1, 1999 (the "Indenture"), between the Authority and U.S. Bank National Association (successor by merger to U.S. Bank Trust National Association), as trustee (the "Trustee"), and loaned (the "Loan") the proceeds of the Bonds to MP Palo Alto Gardens Associates, A California Limited Partnership (the "Original Borrower") pursuant to a Loan Agreement (the "Loan Agreement"), dated as of April 1, 1999, among the Authority, the Original Borrower, and the Trustee, to finance the acquisition and rehabilitation by the Original Borrower of 156 units of multifamily rental housing known as Palo Alto Gardens Apartments (the "Project"), and

WHEREAS, in 2014, the Original Borrower transferred the Project to MP Palo Alto Gardens LLC, a California limited liability company (the "Borrower"); and

WHEREAS, the Loan Agreement contains a provision that prohibits the Borrower from incurring any Indebtedness (as defined in the Indenture), other than certain trade payables, and

WHEREAS, the Borrower desires to incur Indebtedness secured and payable on a basis wholly subordinate to the Loan so that it can finance improvements to the Project, and

WHEREAS, the Indenture provides that the Loan Agreement can be amended if (a) the amendment is approved by the written consent of the holders of at least sixty percent (60%) in the principal amount of the outstanding Bonds, (b) the amendment does not have the effect of extending the time for payment of, or reducing the amount due and payable on, the Loan, and (c) the Trustee obtains an opinion of Bond Counsel (as defined in the Indenture) to the effect that the amendment will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or conformance of the Bonds and the Project with the laws of the State of California relating to the Bonds (the "Bond Counsel Opinion"), and

RESOLUTION NO. 16-03

PALO ALTO GARDENS APARTMENTS

Page 2

WHEREAS, there has been presented to the Board of Directors a First Amendment to Loan Agreement (the "First Amendment"), and the Board of Directors, with assistance from the Authority's General Counsel and Bond Counsel to the Authority for the Bonds, Quint & Thimmig LLP, has determined that the First Amendment does not have the effect of extending the time for payment of, or reducing the amount due and payable on, the Loan and the Board of Directors now desires to approve the First Amendment so that the Borrower can obtain additional financing to improve the Project.

NOW THEREFORE, the Executive Committee of the Board of Directors of the ABAG Finance Authority for Nonprofit Corporations resolves and declares as follows:

1. The Board of Directors hereby finds and declares that the above recitals are true and correct.

2. The First Amendment, in the form presented to the Board of Directors at this meeting, is hereby approved. The Chair, the President or the Secretary of the Authority (each being a "Designated Officer"), each acting alone, are hereby authorized and directed, for and in the name on behalf of the Authority, to execute and deliver the First Amendment in said form, together with such additions thereto or changes therein as are recommended or approved by the officer of the Authority executing such document upon consultation with the Authority's General Counsel and Bond Counsel, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by a Designated Officer of the First Amendment.

3. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED this 29th day of June, 2016.

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

By: _____
Chair,
ABAG Finance Authority for
Nonprofit Corporations

ATTEST:

Acting Secretary,
ABAG Finance Authority For
Nonprofit Corporations

June 13, 2016

To: Beneficial Owners of the Outstanding ABAG
Finance Authority For Nonprofit Corporations
Multifamily Housing Revenue Bonds (Palo Alto
Gardens Apartments), Series 1999A
CUSIP Nos. 00037N FJ0, FK7, FL5 and FM3

Re: Request for Consent of Bondowners to Amendment to Loan Agreement to Allow
Subordinate Loan for Project Improvements

Summary:

The ABAG Finance Authority For Nonprofit Corporations (the "Authority") issued its Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A (the "Bonds") on April 29, 1999, and loaned the proceeds of the Bonds to MP Palo Alto Gardens Associates (the "Borrower"), an entity sponsored by MidPen Housing Corporation, pursuant to a Loan Agreement, dated as of April 1, 1999 (the "Loan Agreement"), among the Authority, the Borrower and U.S. Bank National Association (successor to U.S. Bank Trust National Association) as trustee (the "Trustee"), to finance the acquisition and rehabilitation by the Borrower of the 156 unit Palo Alto Gardens Apartments (the "Apartments"). The Borrower has secured a Community Development Block Grant loan (the "CDBG Loan") from the City of Palo Alto to finance improvements to the Apartments; however, the Loan Agreement currently prohibits the Borrower from obtaining additional financing for the Apartments.

Under the provisions of the Indenture of Trust for the Bonds, the Loan Agreement can be amended with the consent of the owners of at least sixty percent (60%) in principal amount of the outstanding Bonds. The Borrower is hereby soliciting consents from the beneficial owners of the Bonds to an amendment to the Loan Agreement so that it can close on the CDBG Loan and begin the improvements to the Apartments.

What Bondowners Need to Do:

Execute the accompanying Consent to Amendment to Loan Agreement and complete and execute the accompanying Certificate of Beneficial Ownership of Bonds and send the executed two forms to the Bond Counsel for the Bonds at the following address: Quint & Thimmig LLP, 900 Larkspur Landing Circle, Suite 270, Larkspur, California 94939, Attention: Paul Thimmig. Please contact Paul Thimmig at Quint & Thimmig LLP, phone number (415) 925-4200, email: pthimmig@qtilp.com, or your broker, if you have questions regarding this Request for Consent or the above-mentioned two forms.

Background:

Palo Alto Gardens is a family rental housing property located in the City of Palo Alto. It was built in 1973 and was acquired and initially rehabilitated by the Borrower with proceeds of the Loan in 1999. The Apartments consists of 156 apartment units in 10 buildings. Amenities include a central courtyard with BBQ area, a playground, a community room and a computer lab supporting extensive resident services.

The Borrower would like to enter into the documents for the CDBG Loan so that it can finance a scope of work that is intended to raise resident quality of life, reduce operating expenses, and improve the loan-term financial sustainability of the Apartments. The scope of work includes the following: turf removal, drought-tolerant planting, water-efficient irrigation system, accessible walkway improvements and unit entrance improvements, and the creation of seven new parking spaces.

The CDBG Loan will be originated by the City of Palo Alto and will be in the approximate amount of \$671,193, will bear simple interest at a rate three percent (3%) per annum, will be payable from Apartment revenues on a basis subordinate to the payments due on the Loan under the Loan Agreement and will be secured by a Deed of Trust With Assignment of Rents, Security Agreement, and Fixture Filing recorded on the Apartment property that will be wholly subordinate to the Deed of Trust (as defined in the Indenture) that secures the repayment of the Loan. Notwithstanding the foregoing, interest on the CDBG Loan will be deferred and due payable on April 22, 2054; if no uncured default has occurred and gone uncured prior the end of the term of the CDBG Loan, the CDBG Loan will on April 22, 2054 be treated as a grant from the City to Borrower, and no repayment of unpaid principal balance or any accrued interest will be due on the CDBG Loan.

The Bond Counsel firm of Quint & Thimmig LLP will be rendering a legal opinion to the Trustee and the Authority to the effect that the First Amendment to the Loan Agreement will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or conformance of the Bonds and the Project with the laws of the State of California relating to the Bonds (referred to in the First Amendment as the "Bond Counsel Opinion").

The First Amendment to Loan Agreement will allow the Borrower to move forward with the closing of the CDBG Loan and commence the improvements to the Apartments to be financed with the CDBG Loan, and will allow the Borrower to obtain future subordinate financing for other improvements and repairs to the Apartments. The Borrower expects that the CBDG Loan will be funded as soon as it can obtain the necessary consents from the Bondholders to the First Amendment to the Loan Agreement now being requested.

If you have any questions regarding the Apartments or the CDBG Loan, please contact Peter Villareal, Director of Housing Development, Portfolio, MidPen Housing Corporation, telephone No. (650) 356-2929, email: pvillareal@midpen-housing.org.

Thank you for your consideration of the consent to the First Amendment to Loan Agreement.

Very truly yours,

By: _____

Peter Villareal,
Director of Housing Development, Portfolio
MidPen Housing Corporation

FIRST AMENDMENT TO LOAN AGREEMENT

This First Amendment to Loan Agreement, dated as of June 1, 2016 (the "First Amendment"), is by and among the ABAG Finance Authority for Nonprofit Corporations (the "Authority"), U.S. Bank National Association (successor by merger to U.S. Bank Trust National Association), as trustee, and MP Palo Alto Gardens LLC, a California limited liability company, (successor to MP Palo Alto Gardens Associates, A California Limited Partnership) as borrower (the "Borrower"), and amends the Loan Agreement, dated as of April 1, 1999 (the "Original Loan Agreement"), among the Authority, the Borrower and the Trustee.

RECITALS:

WHEREAS, the Authority issued its Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A (the "Bonds") pursuant to an Indenture of Trust, dated as of April 1, 1999 (the "Indenture"), between the Authority and the Trustee, and loaned the proceeds of the Bonds to the Borrower (the "Loan") to finance the acquisition and rehabilitation of 156 units of multifamily rental housing known as Palo Alto Gardens Apartments (the "Project"), and

WHEREAS, the Original Loan Agreement contains a provision that prohibits the Borrower from incurring any Indebtedness (as defined in the Indenture), other than certain trade payables, and

WHEREAS, the Borrower desires to incur Indebtedness secured and payable on a basis wholly subordinate to the Loan so that it can finance improvements to the Project, and

WHEREAS, the Indenture provides that the Original Loan Agreement can be amended if (a) the amendment is approved by the written consent of the holders of at least sixty percent (60%) in principal amount of the outstanding Bonds, (b) the amendment does not have the effect of extending the time for payment of, or reducing the amount due and payable on, the Loan, and (c) the Trustee obtains an opinion of Bond Counsel (as defined in the Indenture) to the effect that the amendment will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or conformance of the Bonds and the Project with the laws of the State of California relating to the Bonds (the "Bond Counsel Opinion"), and

WHEREAS, the Authority has determined that this First Amendment does not have the effect of extending the time for payment of, or reducing the amount due and payable on, the Loan; the Trustee has obtained the necessary Bond Counsel Opinion; and the Authority and the Borrower have requested that the Trustee execute this First Amendment.

AGREEMENT:

NOW, THEREFORE, the parties hereto agree to amend the Original Loan Agreement as follows:

Section 1. Amendment to Original Loan Agreement. Section 5.19 of the Original Loan Agreement is hereby amended and restated in whole to read as follows: “**Section 5.19. No Indebtedness.** The Borrower shall not incur any Indebtedness, other than (a) trade payables incurred in the ordinary course of business of the Borrower, which are to be paid within sixty (60) days of the date incurred, (b) the City Loan, (c) the Loan, and (d) loans the net proceeds of which are used to finance improvements and repairs to the Project that are secured and are payable on a basis subordinate to the Loan.”

Section 2. Ratification and Reaffirmation of Original Loan Agreement. Except as hereby expressly amended, the Original Loan Agreement shall remain in full force and effect; and the Original Loan Agreement, as amended hereby, is ratified and confirmed.

Section 3. Execution in Several Counterparts. This First Amendment may be executed in any number of counterparts; each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same instrument.

Section 4. Effective Date. This First Amendment shall become effective from and after the last to occur of the following: (a) the execution hereof by the Authority, the Borrower and the Trustee, and (b) the receipt by the Trustee of evidence of approval of this First Amendment by the holders of at least sixty percent (60%) in principal amount of the outstanding Bonds.

Section 5. Binding Effect. From and after the date on which this First Amendment becomes effective as provided in Section 4 hereof, this First Amendment shall inure to the benefit of and shall be binding upon the Authority, the Borrower, the Trustee and the owners of the Bonds, and their respective successors and assigns.

IN WITNESS WHEREOF, the Authority has caused this First Amendment to be executed in its name by its duly authorized officer, the Trustee has caused this First Amendment to be executed in its name by its duly authorized officer, and the Borrower has caused this First Amendment to be executed in its name by its duly authorized officer, all as of the date first above written.

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

By: _____

Its: _____

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Trustee

By: _____

Its: _____

MP PALO ALTO GARDENS LLC, a California
limited liability company

By: Mid-Peninsula Baker Park, Inc., a California
nonprofit public benefit corporation, its sole
member/manager

By: _____
Matthew O. Franklin,
Assistant Secretary

June _____, 2016

ABAG Finance Authority For
Nonprofit Corporations
101 Eighth Street
Oakland, California 94607-4756

U.S. Bank National Association, as trustee
One California Street, 10th Floor
San Francisco, California 94111

OPINION: First Amendment to Loan Agreement for: ABAG Finance Authority For Nonprofit Corporations Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A

Ladies and Gentlemen:

The ABAG Finance Authority for Nonprofit Corporations (the "Authority") has issued its ABAG Finance Authority For Nonprofit Corporations Multifamily Housing Revenue Bonds (Palo Alto Gardens Apartments), Series 1999A (the "Bonds") pursuant to an Indenture of Trust, dated as of April 1, 1999 (the "Indenture"), by and between the Authority and U.S. Bank National Association, successor to U.S. Bank Trust National Association, as trustee (the "Trustee"). The proceeds of the Bonds were used to make a loan to MP Palo Alto Gardens, LLC, a California limited liability company, successor to MP Palo Alto Gardens Associates, a California limited partnership, as borrower (the "Borrower"), pursuant to a Loan Agreement, dated as of April 1, 1999 (the "Loan Agreement"), among the Authority, the Trustee and the Borrower, to finance the Palo Alto Gardens Apartments (the "Project"). We understand that the Loan Agreement is now being amended by a First Amendment to Loan Agreement, dated as of June 1, 2016 (the "First Amendment"), among the Authority, the Trustee and the Borrower.

In connection with this opinion, we have examined the law, the Indenture, the Loan Agreement, the First Amendment and such other papers as we deem necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon representations of the Borrower, without undertaking to verify the same by independent investigation. For purposes of this opinion we have assumed that the Authority, the Trustee and the Borrower have fully complied with all of their respective obligations under the Indenture and the Loan Agreement, including those material to the continued exclusion of interest on the Bonds from gross income of the Bond owners for federal income tax purposes, and we have conducted no inquiry, review or investigation with respect to such compliance. We have also assumed that (i) the Indenture and the Loan Agreement are in full force and effect; (ii) since the date of issuance

ABAG Finance Authority For
Nonprofit Corporations
U.S. Bank National Association, as trustee
June _____, 2016
Page 2

of the Bonds, there have been no amendments of or supplements to either of such documents; and (iii) the Authority and the owners of over sixty percent (60%) of the outstanding principal amount of the Bonds have consented to the First Amendment.

Based upon the foregoing, we are of the opinion, under existing law, that the First Amendment will not, in itself, adversely affect the exclusion of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes, or the conformance of the Bonds and the Project with the Act (as defined in the Indenture) or the laws of the State of California relating to the Bonds.

We express no opinion herein as to any matter governed by laws other than the laws of the State of California and the laws of the United States of America. Our opinion represents our legal judgment based upon such review of the law and facts that we deem relevant to render our opinion and is not a guarantee of a result. This opinion is given as of the date hereof and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. This opinion is being rendered to the addressees hereof solely for their benefit in connection with their execution and delivery of the First Amendment, and is not to be relied on by anyone else, or for any other purpose.

Respectfully submitted,

To: Executive Committee
ABAG Finance Authority for Nonprofit Corporations (Authority)

Fr: Kenneth Moy
Acting General Counsel

Dt: June 21, 2016

Re: First Supplemental Indenture of Trust for Multifamily Housing Revenue Bonds
(Terracina at Elk Grove) 2008 Series A

Recommended Action: Adopt Resolution 16-04 approving and authorizing execution of the First Supplemental Indenture of Trust for the ABAG Finance Authority for Nonprofit Corporations' Multifamily Housing Revenue Bonds (Terracina at Elk Grove) 2008 Series A (Bonds).

Description and Summary: Section 2.05(b)(ii) of the original Indenture of Trust limits transfers of the Bonds to the California Community Reinvestment Corporation (CCRC) and to a member bank of CCRC that is a Sophisticated Investor¹. Earlier this year, CCRC asked that the Authority approve a transfer of the Bonds to Citibank, which qualifies as a Sophisticated Investor. Jones Hall, Bond Counsel on the Bonds, and I found that (a) the restrictions on transfers in the original Indenture to members of CCRC was unique, (b) all other Authority Bonds allowed transfers to Sophisticated Investors and (c) CCRC was itself asking from relief from the restriction. We concluded the one-time transfer of the Bonds could be made with the consent of the Authority granted at the staff level.

Citibank is now asking for a blanket authorization to allow transfer to a 'qualified institutional buyer' as defined in Rule 144A promulgated under the Securities Act of 1933. Jones Hall and I have concluded that the proposed change would (a) still meet all of the Authority's Guidelines for Issuance and (b) avoid unnecessary ministerial approvals for future routine transfers of the bonds.

Attachments:

- A. Resolution 16-04
- B. First Supplemental Indenture of Trust

¹ "Sophisticated Investor" is defined as (1) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933; (2) an entity that is directly or indirectly wholly owned or controlled by the initial purchaser/bondholder representative (being a financial institution described in (1) above); or (3) an entity all of the investors in which are described in (1) or (2) above.



RESOLUTION NO. 16-04

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

(TERRACINA AT ELK GROVE)

RESOLUTION AUTHORIZING AMENDMENT TO THE INDENTURE OF TRUST RELATING TO AN ISSUANCE OF \$7,600,000 AGGREGATE PRINCIPAL AMOUNT OF MULTIFAMILY HOUSING REVENUE BONDS (TERRACINA AT ELK GROVE) 2008 SERIES A, THE PROCEEDS OF WHICH WERE LOANED TO TERRACINA ELK GROVE, L.P., FOR THE PURPOSE OF FINANCING THE ACQUISITION AND REHABILITATION OF A MULTIFAMILY HOUSING PROJECT LOCATED IN THE CITY OF ELK GROVE, CALIFORNIA, AND OTHER MATTERS RELATING THERETO

WHEREAS, pursuant to the provisions of the Joint Powers Act, comprising Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California (the “JPA Law”), certain California cities and counties have entered into a joint exercise of powers agreement, dated as of April 1, 1990 and revised as of September 18, 1990 and June 9, 1992 (the “Agreement”), pursuant to which the ABAG Finance Authority for Nonprofit Corporations (the “Authority”) was organized; and

WHEREAS, the Agreement was entered into in order to enable the Authority to assist nonprofit corporations and other entities to obtain financing for projects located within the several jurisdictions of the Authority members with purposes serving the public interest; and

WHEREAS, the Authority is authorized by the Agreement to issue revenue bonds or other forms of indebtedness in order to assist nonprofit corporations and other entities to obtain financing for projects located within the several jurisdictions of the Authority members with purposes serving the public interest; and

WHEREAS, the Authority has previously issued its Multifamily Housing Revenue Bonds (Terracina at Elk Grove) 2008 Series A (the “Bonds”) pursuant to the Indenture of Trust dated as of September 1, 2008 (the “Existing Indenture”), between the Authority and Wells Fargo Bank, National Association, as bondowner representative (the “Initial Bondowner Representative”), and the proceeds of the Bonds were loaned by the Authority to Terracina Elk Grove, L.P. (the “Borrower”) pursuant to the Loan Agreement dated as of September 1, 2008, among the Initial Bondowner Representative, the Authority and the Borrower, to provide for financing of the acquisition and rehabilitation of a multifamily rental housing project known as Terracina at Elk Grove, consisting of 124 housing units located in the City of Elk Grove, California; and

WHEREAS, on the Conversion Date (as such term is defined in the Existing Indenture), all of the outstanding Bonds were transferred by the Initial Bondowner Representative to California Community Reinvestment Corporation (“CCRC”), pursuant to Section 2.05(b) of the Indenture, and on June 16, 2016, all of the outstanding Bonds were transferred by CCRC to Citibank, N.A. (“Citibank”) and Citibank is the current Bondowner Representative; and

RESOLUTION NO. 16-04
Terracina at Elk Grove

WHEREAS, Citibank has requested that the Authority execute a supplement to the Existing Indenture to amend the transfer provisions for the Bonds; and

WHEREAS, pursuant to Section 9.01 of the Existing Indenture, the Authority and the Bondowner Representative may enter into a supplemental indenture to modify the provisions of the Existing Indenture; and

WHEREAS, there has been filed with the Secretary of the Authority a proposed form of First Supplemental Indenture of Trust (the “Supplemental Indenture” and together with the Existing Indenture, the “Indenture”) to be entered into between the Authority and Citibank, as current Bondowner Representative, providing for amendment of the transfer provisions for the Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the Executive Committee of the Board of Directors of the Authority, as follows:

Section 1. The form, terms and provisions of the Supplemental Indenture in the form on file with the Acting Secretary of the Authority are hereby approved, and the President, the Acting Chief Financial Officer or the Acting Secretary of the Authority, or a designee of any such authorized officer, each acting alone, is hereby authorized and empowered to execute and deliver the Supplemental Indenture with such nonsubstantial changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by Bond Counsel and counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof by the aforementioned authorized signatories of the Authority.

Section 2. All actions heretofore taken by the officers and agents of the Authority with respect to the transfer of the Bonds to Citibank are hereby approved, confirmed and ratified, and the officers of the Authority and their authorized deputies and agents are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all certificates and other documents in addition to those enumerated herein, which they or bond counsel may deem necessary or advisable in order to consummate the conversion and remarketing of the Bonds and otherwise to effectuate the purposes of this Resolution.

Section 3. This resolution shall take effect immediately upon its passage.

RESOLUTION NO. 16-04
Terracina at Elk Grove

PASSED AND ADOPTED AT AN ADJOURNED REGULARLY SCHEDULED
MEETING this 29th day of JUNE, 2016.

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

Charles Lomeli, President
ABAG Finance Authority
for Nonprofit Corporations

Attest:

Kenneth Moy, Acting Secretary
ABAG Finance Authority
for Nonprofit Corporations

RESOLUTION NO. 16-04
Terracina at Elk Grove

I, the undersigned, the duly appointed and qualified Secretary of the ABAG Finance Authority For Nonprofit Corporations, do hereby certify that the foregoing resolution was duly adopted by the Executive Committee of the Board of Directors of said Authority at a duly called meeting of the Executive Committee held in accordance with law on June 29, 2016.

Kenneth Moy, Acting Secretary
ABAG Finance Authority
for Nonprofit Corporations

FIRST SUPPLEMENTAL INDENTURE OF TRUST

by and between

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS,
as Issuer,**

and

CITIBANK, N.A., as Bondowner Representative

Relating to

**\$7,600,000
ABAG Finance Authority for Nonprofit Corporations
Multifamily Housing Revenue Bonds
(Terracina at Elk Grove)
2008 Series A**

Dated as of June 1, 2016

FIRST SUPPLEMENTAL INDENTURE OF TRUST

THIS FIRST SUPPLEMENTAL INDENTURE OF TRUST, dated as of July 1, 2014 (this "First Supplemental Indenture"), by and between the ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (the "Issuer"), a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "State") and CITIBANK, N.A., as successor bondowner representative (the "Bondowner Representative"), is supplemental and amendatory to that certain Indenture of Trust, dated as of September 1, 2008 (the "Original Indenture"), between the Issuer and Wells Fargo Bank, National Association, as initial bondowner representative (the "Initial Bondowner Representative") (all capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Indenture).

WITNESSETH:

WHEREAS, pursuant to Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code in accordance with Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended (the "Act"), and the Original Indenture, the Issuer previously issued its ABAG Finance Authority For Nonprofit Corporations Multifamily Housing Revenue Bonds (Terracina at Elk Grove) 2008 Series A (the "Bonds"); and

WHEREAS, the proceeds of the Bonds were used to fund a loan to Terracina Elk Grove, L.P., a California limited partnership (the "Borrower") pursuant to the Loan Agreement, dated as of September 1, 2008 (the "Loan Agreement"), among the Initial Bondowner Representative, the Issuer and the Borrower, to provide financing for the acquisition and rehabilitation of a multifamily rental housing project known as Terracina at Elk Grove, consisting of 124 housing units located at 9440 West Stockton Boulevard in the City of Elk Grove, California (the "Project"); and

WHEREAS, on the Conversion Date, the Initial Bondowner Representative transferred the Bonds to California Community Reinvestment Corporation ("CCRC") and on June 16, 2016, CCRC transferred all of the outstanding Bonds to the Bondowner Representative; and

WHEREAS, Citibank, N.A., as the current Bondowner Representative, has requested that the Issuer amend the Original Indenture to permit the transfer of the Bonds to "qualified institutional buyers" that meet certain requirements, as provided herein; and

WHEREAS, pursuant to Section 9.01 of the Original Indenture, the Issuer and the Bondowner Representative may enter into a supplemental indenture for the purpose of modifying the Original Indenture, if the Issuer provides a Certified Resolution authorizing the execution of such supplemental indenture; and

WHEREAS, the Executive Committee of the Board of Directors of the Issuer adopted a Certified Resolution on June 29, 2016, authorizing the amendment of the Original Indenture pursuant to the terms of this First Supplemental Indenture, and authorizing the execution thereof; and

WHEREAS, the Issuer and Bondowner Representative desire to supplement the Indenture for such purposes; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

ARTICLE I AUTHORITY

Section 1.01. Supplemental Indenture. This First Supplemental Indenture is supplemental and amendatory to the Original Indenture.

Section 1.02. Authority for the First Supplemental Indenture. This First Supplemental Indenture is executed and delivered pursuant to and in accordance with Section 9.01 of the Original Indenture.

ARTICLE II AMENDMENTS TO THE INDENTURE

Section 2.01. Amendments to the Indenture. The provisions of the Original Indenture shall be amended, modified and supplemented as follows:

(a) The following definition contained in Section 1.01 of the Original Indenture is hereby amended in full, as follows:

“The term ‘Sophisticated Investor’ shall mean a ‘qualified institutional buyer’ as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the ‘Securities Act’).”

(b) Section 2.05(b)(ii) and (iii) of the Original Indenture are hereby amended in full, as follows:

“(ii) The Bonds shall only be transferred in whole, and only to (A) CCRC, or (B) a Sophisticated Investor.

“(iii) each transferee of the Bonds shall deliver to the Issuer an investor’s letter in the form of Exhibit B hereto wherein the transferee agrees, among other matters, not to sell participating interest in the Bonds without the prior written consent of the Issuer;”

**ARTICLE III
MISCELLANEOUS**

Section 3.01. Governing Law. This First Supplemental Indenture shall be governed and construed in accordance with the laws of the State of California.

Section 3.02. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 3.03. Confirmation of Indenture. Except as amended hereby, the Original Indenture shall remain in full force and effect and is hereby ratified and confirmed in all respects. This First Supplemental Indenture shall be deemed to be an amendment to the Original Indenture and a supplemental indenture within the meaning of Article IX of the Indenture. All references in the Original Indenture to "this Indenture," "hereunder," "hereof," "herein," or other words of like import, and all references to the Indenture in any other agreement or document shall hereafter be deemed to refer to the Indenture as amended hereby.

Section 3.04. Execution in Several Counterparts. This First Supplemental Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Issuer and the Bondower Representative shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Issuer and the Bondowner Representative have caused this First Supplemental Indenture to be executed and delivered by duly authorized officers thereof, all as of the date first above written.

ISSUER:

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

By: _____
President

Attest:

Acting Secretary

BONDOWNER REPRESENTATIVE:

CITIBANK, N.A., a national banking
association

By: _____
Name: James Brad Edgar
Title: Authorized Signatory



FAN Memorandum

Date: June 22, 2016

To: FAN Executive Board

From: Courtney Ruby, ABAG Director of Finance/FAN CFO

Re: Five Year Budget Projection 2016-17 to 2020-21

Following are the assumptions that were used in preparing FAN's 2016-17 Budget:

1. Organizational Structure – FAN continues to operate as an enterprise fund under the ABAG corporate umbrella. The daily operations of FAN are directed by a Committee of the FAN Board of Directors. The Executive Director of FAN is the ABAG Executive Director, and the Chief Financial Officer is the ABAG Finance Director. FAN has no employees, as all staff functions are performed by ABAG employees, for which FAN is billed actual cost, including an indirect cost charge.
2. Interim Financial Services Manager – The budget provides for an Interim Financial Services Manager who will be dedicated to FAN operations, and will report to the ABAG Executive Director. This employee will manage the administrative operations of FAN and will also perform the monitoring function required by housing projects for which FAN is the conduit bond issuer, and for which FAN receives an annual fee.
3. Consultants – Sheelagh M. Flanagan has been engaged as a marketing consultant under a contract to be completed by December 1, 2016. The contract fee of \$100,000 is included in the FY 2016-17 budget as a consultant expense, under the Conduit activities of FAN. There is no provision for similar expenses beyond FY 2016-17.

Charlie Adams has been engaged as an accounting consultant to recover unbilled expenses incurred by FAN in prior years, revise the FAN accounting structure to track and report transactions of special assessment districts administered by FAN, and to assist in implementation of internal controls procedures recommended by Management Resources Group, the consulting firm that performed a detail review of FAN operations and drafted a desk manual for FAN operations. This contract is included in the FY 2016-17 budget, at an amount not to exceed \$90,000.

4. Personnel Costs and Indirect Charges – ABAG employees performing services for FAN are included in the FY 2016-17 budget at their current hourly rates for salary and benefits. The budget includes ABAG indirect costs, billed at 44.95% of personnel cost. This indirect cost rate is the federally approved rate, which is applied by ABAG to all contracts and activities that are subject to indirect cost recovery.



5. Special Assessment District Revenue – The budgeted revenue for the Community Facilities Districts and the Assessment Districts is equal to the budgeted expenses for each district.
6. Conduit Funding Revenue – The major sources of conduit revenue are application fees, closing fees, administration fees, and monitoring fees. The specific fees, and the fixed amounts or basis for calculation of the fees, are established at the time bonds are issued. Each year the existing fee base will decline as bonds mature or are refunded. Each year the fee base is increased by the addition of new conduit financing. For the FY 2016-17 budget, it is projected that the FY 2015-16 base will decline by \$20,000, and that fees generated by new funding will be \$50,000.
7. Interest Revenue – FAN cash, not required for current operations, is invested in LAIF and CalTrust accounts. The balance of investments is approximately \$4 million, and this amount is projected to remain constant in FY 2016-17, and the interest rate is projected to remain at approximately .25%.
8. Other Direct Charges – Other charges for FY 2015-16 are projected to be approximately \$100,000, of which approximately \$50,000 are non-recurring expenses related to the investigation of the embezzlements of 2014 and 2015. The FY 2016-17 budget of \$58,000 reflects a cushion for unknown expenses that may result from office relocation, staff recruitment, and new marketing initiatives.

FISCAL YEARS 2017-18 TO 2020-21

Major assumptions in the budget projections for fiscal years 2017-18 through 2020-2021 are:

1. Conduit financing revenue will increase a net \$30,000 a year, reflecting re-energized marketing effort and ventures into new financing activities.
2. Personnel costs are adjusted by a 2% inflation factor each year. There is a reduction in hours of 35% in FY 2017-18 for Ken Moy, as the Financial Services Manager assumes increased responsibilities.
3. Consultant expenses of \$190,000 budgeted for FY 2016-17 are not anticipated in future years.

During the Executive Committee meeting I will present the budget and address any questions you may have.

**ABAG FINANCE AUTHORITY FOR NONPROFITS
PROJECTION FY 2015-16 and BUDGETS FY 2016-17 TO 2021-22**

	Projected	Budget	Proposed Budgets				
	Actual FY 15-16	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
REVENUES							
Interest Income (Pools)	\$ 16,202	\$ 13,500	\$ 16,000	\$ 16,320	\$ 16,646	\$ 16,979	\$ 17,319
Interest Income	5,173	4,000	3,000	3,000	3,000	3,000	3,000
Financial Services Revenue	1,235,401	1,135,805	851,699	882,783	914,846	946,951	979,098
Total Revenues	1,256,776	1,153,305	870,699	902,103	934,492	966,930	999,417
EXPENSES							
Personnel Costs	406,993	479,551	361,576	329,847	335,444	341,153	346,976
Consultant Services	351,150	138,400	261,000	72,220	73,464	74,733	76,028
Other Direct Charges	100,035	241,800	58,000	58,000	58,000	58,000	58,000
Indirect Charges	182,943	216,278	162,528	148,266	150,782	153,348	155,966
Total Expenses	1,041,121	1,076,029	843,104	608,333	617,690	627,234	636,970
Surplus/(Deficit)	\$ 215,655	\$ 77,276	\$ 27,595	\$ 293,770	\$ 316,802	\$ 339,696	\$ 362,447

FAN Memorandum

Date: June 22, 2016

To: FAN Executive Board

Prepared by: Charlie Adams, Former ABAG Interim Director of Finance/FAN CFO

From: Courtney Ruby, ABAG Director of Finance/FAN CFO

Re: ABAG's Response to FAN's prior embezzlement

The discovery and disclosure of embezzlements of nearly \$4 million by the FAN Financial Services Director, Clarke Howatt, sparked a series of action by the:

- FAN Board of Directors
- ABAG Board of Directors
- California State Senate Committee on Governance & Finance
- California State Controller
- Metropolitan Transportation Commission (MTC)

The primary questions for all of the entities with actual or potential oversight responsibility for ABAG's administration of public funds were:

- Discovery of any embezzlements not initially disclosed by Howatt.
- Identification of the entities from which funds had been embezzled.
- Identification of any persons who may have colluded with Howatt in the embezzlements.
- Discovery of any FAN/ABAG weaknesses in internal accounting and administrative controls that contributed to the perpetration of the embezzlements, and that might allow for future defalcations or misuse of public funds.
- Evaluation of immediate and planned remedial actions by ABAG to reduce the potential for future embezzlement.

Consistent findings from the inquiries and examinations of the five authorities listed above include:

- No information was discovered that indicated that additional defalcations may have occurred.
- No information was discovered that indicated the involvement of any person other than Howatt in the embezzlements.
- The funds embezzled were from two Community Facilities Districts. There were no funds embezzled from:
 - any organizations for which FAN served as conduit bond issuer,
 - any corporate accounts of FAN or ABAG, or
 - any grant funding administered by ABAG.
- A system of internal accounting controls for FAN operations had been prescribed that would either prevent the embezzlements or caused their discovery sooner than occurred, but deficiencies in supervision of the Finance Services Director, Clark Howatt, and failure to maintain accounting records for assessment districts, outside of FAN administrative offices, allowed the internal accounting controls to be circumvented.

Immediate Remedial Actions taken by ABAG

Upon discovery of the embezzlement by ABAG management, the following actions were taken:

- Acceptance of the resignation of Clarke Howatt, termination of his access to all FAN and ABAG bank and investment accounts and internal accounting records.
- Re-designation of officials authorized to approve transfer of assessment district funds and disbursement of funds to parties not specified in original bond issuance documents.
- Created a matrix for the approval of invoices processed by FAN and increased required signatures to three for transactions in excess of \$100,000.
- Recruited an Interim Finance Services Director, with knowledge of FAN structure and operations.
- Recruited an Interim ABAG Finance Director, with experience in audit of public agencies and issuance of municipal bonds.
- Engaged Orrick and FTI to perform a forensic examination of FAN transactions for the most recent five years.
- Established a seven step procedure for submission of disbursement requests to bond trustees.
- Established a five step procedure for reconciliation of district accounts at bond trustees.

Response to Initial Findings and Recommendations

- Responded to the report of the State Controller and successfully addressed all findings.
- Cooperated in the Special Procedures Engagement performed by MTC's independent auditors, PriceWaterhouseCoopers.
- Accepted the findings and recommendation of Management Resources Group (MRG) for strengthening the internal accounting and administrative controls for administration of the Community Facilities Districts and Assessment Districts.
- With MRG, completed a Handbook/Desk Manual for Community Facilities Districts, Assessment Districts and other bond programs.
- Developed a FAN operating budget which recognized the distinction between CFDs and Assessment Districts, and conduit financing activities.
- Strengthened the oversight of FAN by ABAG management through increased involvement of ABAG Legal Counsel and ABAG Finance Director, including the transfer of all accounting responsibilities to the ABAG Finance Department.
- Resolved the issue of past due accounts receivables on the FAN books. These receivables had been used to mask the embezzlement of CFD funds.
- Consolidated depository account and trustee accounts in one bank. The separation of these accounts resulted in unnecessary transfers that complicate the tracking and reporting of tax revenues of CFD's and Assessment Districts.

Procedural Enhancements in Progress

- Closing of superfluous depository accounts that make reconciliation of accounts time consuming and cumbersome.
- Implementation of accounting procedures to provide general ledger control of transactions in trustee accounts of districts administered by FAN.
- Institution of formal periodic financial reporting of FAN activities to the FAN Executive Committee by the ABAG Finance Director.

- Recruitment of an Assistant Finance Services Director, with experience in bond issuance, continuing disclosure, and subsequent transaction such as refinancing.

To: Executive Committee
ABAG Finance Authority for Nonprofit Corporations (Authority)

Fr: Ezra Rapport, President
Kenneth Moy, Acting General Counsel

Dt: June 21, 2016

Re: Impacts of Consolidation of the Staffs of the Association of Bay Area
Governments (ABAG) and the Metropolitan Transportation Commission (MTC)
on the Authority

Summary: ABAG formed the Authority as a joint power authority to provide access to municipal financing for projects of public benefit, including projects on behalf of nonprofit corporations. Under the Authority Bylaws, ABAG's Executive Director serves as the Authority's President, ABAG's Finance Director serves as the Authority's Chief Financial Officer and ABAG's Financial Services Director serves as the Authority's Secretary. Further, under a contract for services between the Authority and ABAG, the staff of ABAG also serves as staff to the Authority by providing fiscal agent and treasury functions, management of new transactions and the Authority's current bond portfolio, administrative and support functions and program development.

The ABAG Executive Board has adopted the *Option 7 Implementation Action Plan* (IAP) which will affect the manner in which ABAG is able to continue its staffing of the Authority. This memorandum provides a brief description of the IAP and its possible impacts on program delivery.

Background and Update: A proposal, last Summer, by the MTC staff to cease funding ABAG for its land use planning work for the update to Plan Bay Area and to subsume the ABAG planning and research staff was diverted by the Commission with the adoption of their resolution 4210 in September 2015. Pursuant to this resolution, ABAG and MTC jointly retained and funded a consultant to explore restructuring the two agencies. Management Partners was retained in this role. We anticipate that MTC will formally vote to adopt an Implementation Action Plan (IAP) (attached) that will void the initial MTC staff proposal. The ABAG Executive Board voted to adopt the IAP at its special meeting of June 16. The balance of this memorandum will outline the purpose and function of the IAP, potential impacts on the PLAN and the PLAN Program and proposed role for the PLAN, its members and their constituency.

A. IAP

The IAP is a guide and tool for ABAG and MTC to conclude negotiations on a Memorandum of Understanding (MOU) and a Contract for Services (CS). The MOU will outline a process and a timeline for ABAG and MTC to consider and possibly implement alternative governance structures for the two agencies.

The CS will be the document under which (1) ABAG planning, program and enterprise staffs become MTC employees and (2) the consolidated staff provides services to ABAG and its affiliated programs and enterprises. MTC will examine the structure, functions and finances for each of ABAG's planning, program and enterprise functions to evaluate their soundness. In turn, ABAG will examine MTC's staffing, structure and finances to evaluate MTC's ability to implement ABAG's ongoing programs and enterprises. This mutual evaluation will serve as the basis for negotiation of the terms of the CS.

By its terms, the IAP is not prescriptive regarding results or the process to reach those results. The agencies have agreed to extend MP's contract to assist and facilitate the negotiations on the MOU and the CS. The proposed timeline in the IAP is very aggressive. ABAG staff will provide regular updates on the process via its website.

B. Staffing to the Authority

The ABAG staff and contractors who currently provide staffing to the Authority will not change as a result of the staff consolidation. We expect that our evaluation of MTC's ability to support the staff transferred from ABAG in general, and the specific staffing for the Authority, will raise issues that need to be addressed in the CS. We are committed to taking all reasonable steps to ensure that all issues are identified and addressed in the CS and to include a process for resolving and correcting service delivery problems in the CS. This includes such consultation with Authority's membership, Board of Directors or the Executive Committee as may be necessary. Direct discussions between the Authority and MTC will be conducted on an as needed, or as requested basis.

C. Impacts on Legal and Operational Relationship between ABAG and the Authority

Negotiation of the CS may change the titles and positions of the individuals employed by MTC to fill the positions of the Authority's President, Chief Financial Officer and Secretary. The Authority may need to amend its Bylaws to reflect this change if it occurs. In addition, the Authority and ABAG will need to revise current contract for services to reflect the fact that persons employed by MTC will be staffing the Authority. Additional revisions may be needed to reflect, accommodate or coordinate with the terms of CS applicable to staffing for the Authority..

To: Executive Committee
ABAG Finance Authority for Nonprofit Corporations (Authority)

Fr: Kenneth Moy
Acting General Counsel

Dt: June 21, 2016

Re: Contract for Services with Sheelagh Flanagan

Recommended Action: Authorize the President of the Authority to execute a Contract for Services with Sheelagh Flanagan for the period from July 1, 2016 to December 31, 2016 in an amount not to exceed \$100,000.

Description and Summary: At its March 30, 2016 meeting, the Committee received a report from the President of the Authority, Ezra Rapport on possible future opportunities for the Authority's conduit issuance practice that would complement the region's infrastructure needs, environmental and conservation programs and energy efficiency goals. The Committee accepted his report, authorized the release of a Request for Qualifications for a consultant to assist in this process and approval of Lomeli to serve on the selection panel.

At the conclusion of the RFQ period, Authority staff selected qualified candidates for a interviews. At the conclusion of the interviews, the interview panel selected Sheelagh Flanagan as the preferred candidate. Contract negotiations with Flanagan have been concluded resulting in a contract for the period from July 1, 2016 to December 31, 2016 for One Hundred Thousand Dollars (\$100,000).

The following is an illustrative list of activities, tasks and deliverables that Flanagan will provide under the direct supervision of Rapport:

1. Development of a mission statement for FAN and recommend any changes in bylaws, or a process for considering changes in bylaws to the FAN Executive Committee.
2. Present to larger FAN Board the scope of work to reestablish the business and the FAN name, and obtain input and approval for the new mission statement and any proposed bylaw changes.
3. Assist in providing any information necessary for the FAN President to prepare a FAN business plan for presentation to the FAN Executive Committee.

4. Understand and implement controls and measures recommended by the recent internal investigation to ensure proper accountability of issuer funds and accounts; understand the assets and liabilities of FAN and identify the financial margins of alternative transactions of FAN, examine the potential for success, and recommend any changes in fee structure based upon competitive factors.
5. Prepare and present a formal presentation to FAN member agencies outlining, among other things, the aforementioned policies and procedures and internal controls in place at FAN;
7. Attend relevant industry events and conferences, hand out literature outlining the new and improved FAN structure, answer questions, and describe why it is beneficial or advantageous to use FAN.
8. Manage deal flow of new and existing transactions which entails initial receipt of documents, due diligence and managing the process from deal inception to closing.

Actual activities, tasks and deliverables will evolve over the term of the contract.

To: Executive Committee
ABAG Finance Authority for Nonprofit Corporations (Authority)

Fr: Kenneth Moy
Acting General Counsel

Dt: June 21, 2016

Re: First Amendment to Contract for Services with Charlie Adams

Recommended Action: Authorize the President of the Authority to execute a First Amendment to Contract for Services with Charlie Adams that extend the term to June 30, 2017 and increases the maximum amount payable from \$30,000 to \$90,000..

Description and Summary: Charlie Adams served as ABAG's Interim Finance Director from March 2015 to January 31, 2016. In that capacity he also served as the Authority's Interim Chief Financial Officer and was a part of the senior management team that helped manage the internal investigation of the embezzlement of the Authority. Adams could not continue as the Interim Finance Director/Chief Financial Officer due CalPERS regulations¹.

Using the ABAG procurement guidelines, the President of FAN entered into a sole source contract to Adams in an amount not to exceed Thirty Thousand Dollars (\$30,000) with a term that commenced February 1, 2016 and concluding on June 30, 2016. Under the contract, Adams provided services in the following areas:

1. implementation of the Internal Controls Observations and Recommendations (December 15, 2015) issued by Orrick and FTI Consulting,
2. formulation and implementation of guidance from Municipal Resource Group LLC regarding administration, recordkeeping and accounting procedures for Community Facilities Districts (CFD) and assessment districts, and
3. performance of other accounting and administrative functions as may be mutually determined to be beneficial and necessary to FAN operations.

Under the contract Adams is compensated based on an hourly rate of \$135 per hour.

By June 30, Adams will reach the maximum amount payable under the contract. Ezra Rapport, the President of FAN and Courtney Ruby, the Interim Chief Financial Officer

¹ Adams is a CalPERS retiree. His immediate past post was serving as the Finance Director for the City of Albany.

of FAN recommends extension of the contract with Adams to June 30, 2017 and an increase in the maximum amount payable from Thirty Thousand Dollars (\$30,000) to Ninety Thousand Dollars (\$90,000). The scope of work remains unchanged with the proviso that under section 3, Adams will be called upon to support negotiation of the provision of staffing for the Authority from the Metropolitan Transportation Commission (see related discussion under Agenda Item 8).

Under ABAG's procurement guidelines, the amendment to the contract requires approval by the FAN Executive Committee since the contract will now exceed the President's contracting authority of Fifty Thousand Dollars (\$50,000).