

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: November 10, 2016
To: ABAG Executive Board
From: Kenneth Moy
Legal Counsel
Subject: **Exchange of Real Estate Interests—101 8th Street and 375 Beale Street**

Summary and Requested Action: For the reasons set forth below, I am requesting that the Executive Board explicitly grant to the Administrative Committee the authority to authorize the Executive Director, or his designee, to execute all documents reasonably necessary to complete the real estate exchange described below, subject to approval by Legal Counsel.

A. Background:

In 2012, policymakers from ABAG and BAHA negotiated the terms of a Memorandum of Understanding dated February 13, 2013 (MOU) (Attachment A) under which ABAG would relocate its headquarters to 375 Beale Street, San Francisco (375 Beale) and join the Metropolitan Transportation Commission (MTC) and the Bay Area Air Quality Management District (AD) which would also be headquartered at 375 Beale.

The relocation would be accomplished through a real estate exchange of ABAG's condominium interest at 101 8th Street for a condominium interest to be created at 375 Beale (ABAG Unit). With respect to the physical aspects of the ABAG Unit:

- (1) BAHA delivers the ABAG Unit in "turnkey" condition and designed to the same standards as the space to be occupied by MTC.
- (2) Space plans for the ABAG Unit and related common use areas provides for basic functionalities such as storage space, conference rooms, IT facilities, pantries, etc.

Additional economic terms are:

- (a) ABAG provides \$4.2 million for capital tenant improvements from funds provided by MTC to ABAG per the funding framework approved by MTC in February 2013¹.
- (b) BAHA pays for moving costs.
- (c) ABAG's share of the annual Common Expenses² at 375 Beale plus ABAG's annual costs for utilities and janitorial services for ABAG Unit shall not exceed \$314,000 adjusted annually

¹ The obligation to pay is strictly limited to funds provided by MTC under the Funding Framework. MTC removed this funding from the Funding Framework in 2016.

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for inflation as measured by the CPI for San Francisco – Oakland – All Urban Consumers, commencing on the date ABAG moves into the ABAG unit.

Additional terms regarding amenities are:

- (i) Subject to adequate demand, shuttle service from the Embarcadero BART station to 375 Beale will be provided for all public agency board and committee meetings, and
- (ii) BAHA provides an on-site food market/deli and coffee shop on the ground floor space of 375 Beale.

Finally, preliminary draft versions of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) for 375 Beale and the Purchase and Sale Agreement and Joint Escrow Instructions (PSA) are attached to the MOU.

BAHA completed the physical renovation of 375 Beale in Spring 2016. However, the real estate exchange could not be consummated because the legal process to create the condominiums, including the ABAG Unit, had not been completed. On May 23, 2016, ABAG moved to 375 Beale and took occupancy under a Lease between BAHA and ABAG (Lease) (Attachment B). As required by the MOU, BAHA paid for moving expenses. The Lease provides that ABAG will pay its share of the Common Expenses but capped at \$314,000. Thus, ABAG has been occupying the ABAG Unit under the same economic terms that would have applied had the real estate exchange been consummated.

B. Timing of the Real Estate Exchange

BAHA anticipates consummation of the real estate exchange in 2017. Some of the documents are not yet available in sufficiently final form for presentation and approval. The Executive Board may hold a special meeting on December 15 which would be timely. If the Executive Board does not hold a special meeting, the Administrative Committee should be explicitly granted the authority to authorize the Executive Director, or his designee, to execute all documents reasonably necessary to complete the real estate exchange, subject to approval by Legal Counsel.

Attachments:

- A. Memorandum of Understanding
- B. Lease

² Common Expenses are the costs of operating and maintaining 375 Beale. ABAG's share is determined by a formula based on the amount of space in the ABAG Unit.