



**Date:** November 10, 2015  
**To:** ABAG PLAN Executive Committee  
**From:** James Hill, PLAN Risk Management Officer  
**Subject:** **ABAG/MTC Merger Consolidation – Status Report**

### **Recommendation**

This staff report is being provided for your information only. No action is required at this time.

### **Overview**

A meeting of the MTC Commissioners was held on October 28th to continue dialog and conduct a vote on an amended proposal to merge designated ABAG planning staff within MTC's planning unit. PLAN Executive Committee was provided with background on the subject matter at the October 21<sup>st</sup> meeting. The special meeting of the PLAN Executive Committee included commentary, highlights and feedback from ABAG Executive Director and ABAG General Counsel based on information currently available.

During the course of the October 21<sup>st</sup> EC meeting, concerns were raised by members of the committee as to the impact of any action taken by MTC/ABAG on the PLAN enterprise fund. The primary objective of the EC, as duly noted during this meeting, is to maintain the overall integrity of the PLAN program for the benefit of all PLAN members, maintain stability of the program in terms of cost elements (specifically the administrative cost component) and to explore long term solutions/options for the program.

### **Highlights**

The focus of the MTC meeting was Agenda Item 2a (Chair's Report) which requested action be taken on a proposed resolution (4210) that would authorize the MTC Executive Director to initiate steps to implement a Functionally Consolidated Planning Department. Another action item (Agenda 2b) called for the approval of an amendment to the MTC/ABAG Interagency Agreement with respect to MTC funding.

Of great interest is the fact MTC resolution 4210 did not depart significantly from the original or previous MTC recommendation. Resolution 4210 included a provision to consolidate thirteen ABAG Planners and move them to MTC. It also included a provision to continue funding a small portion of the ABAG planning operation for the full fiscal year. The resolution contained a requirement to conduct an independent study on a merger between the two agencies by a proposed date of June 1, 2016.

The ABAG Administrative Committee met shortly before the MTC commissioner's meeting and approved resolution 12-15 which by intent modified MTC resolution 4210. The ABAG resolution proposed that MTC approve the full FY funding for the ABAG planning operations and also included a provision to conduct a jointly funded merger study (MIP) to be overseen by both boards and to be reviewed/approved by each board. The resolution called for pre-empting any move of ABAG's planning staff to MTC should the MIP be approved by July 1 2016.

The ensuing discussion gravitated towards an overall acceptance of the concept of a merger of the two agencies. It was made clear by the commissioners that a more thoughtful and deliberate approach to the situation was necessary. Both groups agreed that an independent third party (specialized consultant) would be necessary to perform the study. The general consensus of the ABAG representatives was to

keep the entire ABAG organization intact and to include all of its operating units (enterprise funds) in the proposed merger/consolidation discussion.

### **Summary**

The modified resolution was passed by the MTC Commissioners unanimously. This action eliminated the immediate threat of a loss of MTC funding (and the transfer of ABAG planning staff) and effectively has deferred any potential adverse outcome until July 1, 2016. At that time, it is the expectation of the MTC Commission that a plan will have been developed specific to the merger of the two agencies. The action by the MTC Commission does abate some of the initial concerns raised during the PLAN Executive Committee meeting. Timing issues were noted as being a significant concern of the PLAN Executive Committee. In absence of a clear picture of the post-merger structure of MTC/ABAG and its enterprise funds moving forward, PLAN continues to be faced with some level of "organizational risk".

The MTC Commissioners have provided their thoughts and give full support to the endeavor. Each noted the challenges associated with the merger but have taken a "we will not fail this time" approach. They continue to encourage each group (MTC/ABAG) to work together in achieving the stated objective.

MTC/ABAG are currently working on developing an RFP for Consulting Services to take on the task at hand. A draft RFP is currently under review by ABAG staff. No meaningful information will be available until the details are worked out between the two agencies utilizing the third party consultant. The study is estimated to take up to 8 months in line with the imposed deadline. From an ABAG perspective, the goal will be to keep all operating units intact (with the exception of a joint planning group) and minimize any disruption to its enterprise funds. The actual implementation of a merger/consolidation plan could take several months post study (12 months).

The current level of uncertainty of outcomes does create "organizational risk" to the PLAN enterprise fund and compels the Executive Committee to conduct the necessary due diligence in planning for the various outcomes. As a risk management group, PLAN must evaluate all risk/exposure to the group resulting from any actions taken by MTC and/or ABAG. The primary goal will be to reduce risk to the PLAN organization and its member agencies in both the near and long term.

The Executive Committee will identify and evaluate all issues/concerns regarding current or prospective activity within the two organizations (ABAG/MTC). The EC will direct PLAN staff in terms of providing the committee with any and all information required to evaluate "risk" to the organization and to ensure full transparency of the process.

At the direction of the Executive Committee, PLAN staff is prepared to conduct a more in depth analysis of options available to the group.

### **Attachments**

1. MTC Resolution 4210 with initially proposed markup
2. ABAG Administrative Committee Resolution 12-15; modifying the MTC resolution.
3. Julie Pierce ABAG Chair email to ABAG staff
4. Charlie Adams rebuttal memo; re MTC Financial Assumptions
5. Board Retreat; Draft Agenda for December 15<sup>th</sup> Retreat

# **Attachment 1**

**MTC Resolution 4210 with  
initially proposed markup**

Date: October 28, 2015  
W.I.: 1121

ABSTRACT

MTC Resolution No. 4210

This resolution approves the functional consolidation of planning departments within MTC, revises the multi-year funding framework between MTC and the Association of Bay Area Governments (ABAG) consistent with the functional consolidation, and extends the FY2014-15 funding agreement, as amended, through FY 2015-16 or until completion of the functional consolidation, whichever occurs first.

Further discussion of this subject is contained in Commission memoranda dated September 18, 2015 and October 23, 2015.

Re: Approval of the Functional Consolidation of Planning Departments within MTC

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 4210

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 Bay Area's case, there is a unique 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; now, therefore, be it

RESOLVED, that MTC supports an integrated planning department incorporating staff from MTC and ABAG planning departments as the best near-term approach to carry out the significant and challenging responsibilities set forth in Senate Bill 375; and be it further

RESOLVED, that MTC approves principles to guide the creation of an integrated regional planning department attached hereto as Attachment A and incorporated herein as though set forth at length; and be it further

RESOLVED, that MTC approves the revisions to the MTC/ABAG Funding Framework attached hereto as Attachment B and incorporated herein as though set forth at length; and be it further

RESOLVED, that MTC approves the amendment to the Interagency Agreement between MTC and ABAG for Planning substantially in the form attached hereto as Attachment C and incorporated as though set forth at length; and be it further

RESOLVED, that MTC directs staff to move forward to create an integrated regional planning department, including consultation with local government and other interested stakeholders, consistent with Attachments A, B, and C.

**METROPOLITAN TRANSPORTATION COMMISSION**

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Dave Cortese, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on October 28, 2015.

## Principles for Functional Consolidation of MTC-ABAG Planning Departments

1. MTC shall provide the remaining six months of FY 2015-16 planning funds at current levels, ~~unless the functional consolidation and transition is accomplished sooner,~~ as detailed in Amendment #2 to the MTC/ABAG Interagency Agreement (Attachment C).
2. ~~Beginning July 1, 2016,~~ MTC shall offer positions at equal or better compensation to 13 ABAG planners through a right of first refusal retention process, and together with MTC's planning department, shall create an integrated regional planning department (regional planning department).
3. The regional planning department shall be employed and receive performance reviews through MTC. The regional planning department shall serve both the MTC Commission and the ABAG Executive Board.
4. Creation of the regional planning department shall respect and maintain the existing statutory authority of MTC Commission and ABAG Executive Board. Further, the respective agency roles in preparing/approving the Regional Housing Needs Analysis (RHNA) and Plan Bay Area will be unchanged.
5. After consultation with ABAG, MTC shall annually adopt a resolution identifying the scope of staffing services to support the work of the ABAG Executive Board, including the ability of the ABAG Executive Board to commission additional studies and other activities.
6. ABAG will retain two planners to perform RHNA and five employees for Bay Trail and resiliency work (based on FY2015-16 staffing levels).
7. BATA shall continue to fund Bay Trail activities at current funding levels and the function will remain the responsibility of ABAG.
8. MTC shall provide \$1.2 million in transition funding to ABAG through at least FY 2020-21, as detailed in Attachment B. The funding will be directed to ABAG's pension liability or other specific expense to improve the financial stability of the agency, and will be subject to an annual fiscal audit.
9. With the exception of principle #8 above, MTC shall retain the remaining planning funds (that were subject to the MTC/ABAG Interagency Agreement prior to Amendment #2)

beginning in FY 2016-17, consistent with the revised MTC/ABAG Funding Framework (Attachment B).

10. In the event that a question concerning representation of MTC employees arises, MTC will adhere to its adopted MTC employer-employee organization relations resolution and current Memorandum of Understanding with the Committee for Staff Representation while maintaining neutrality

11. MTC and ABAG shall ~~retain~~ expedite the retention of a mutually acceptable consultant to conduct a jointly funded merger study and a merger implementation plan of MTC and ABAG in FY 2016-17 to be completed by June 1, 2016. The study shall examine the policy, management, financial and legal issues associated with further integration, up to and including institutional merger between MTC and ABAG and shall set forth the specific plans benchmarks, and milestones for implementation. This plan shall be referred to as the proposed ABAG/MTC Merger Implementation Plan (MIP). The study and plan shall be governed by the joint MTC Planning and ABAG Administrative committees and be informed by the full participation of designated ABAG and MTC representatives through public meetings governed by the Brown Act.

~~11.12.~~ Notwithstanding paragraphs 1-10 in Attachment A, in the event ABAG and MTC approve the MIP prior to July 1, 2016, each in its sole discretion, and by formal resolution, the functional consolidation of planning departments shall be pre-empted and the actions outlined in principles 2-10 shall be void.

**Attachment B**

**MTC/ABAG Funding Framework**

**REVISED MTC Funding Commitments**

**October 2015**

	FY2013-14	FY2014-15	FY2015-16	FY2016-17	FY2017-18	FY2018-19	FY2019-20	FY2020-21	Total
<b>Current Framework</b>									
Planning & Research	3,755,000	3,687,000	3,742,000	3,798,000	3,855,000	3,913,000	3,972,000	4,031,000	\$ 30,753,000
Tenant Improvements	400,000	400,000	450,000	550,000	600,000	600,000	600,000	600,000	\$ 4,200,000
Total	4,155,000	4,087,000	4,192,000	4,348,000	4,455,000	4,513,000	4,572,000	4,631,000	\$ 34,953,000
<b>Revised Framework</b>									
Planning & Research	3,755,000	3,687,000	3,742,000 <sup>++</sup>	-	-	-	-	-	\$ 7,442,000
Transition Cost Support				1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	\$ 6,000,000
Tenant Improvements	400,000	400,000	450,000	550,000	600,000	600,000	600,000	600,000	\$ 4,200,000
Total	4,155,000	4,087,000	4,192,000	1,750,000	1,800,000	1,800,000	1,800,000	1,800,000	\$ 21,384,000
<b>Difference</b>	-	-	-	(2,598,000)	(2,655,000)	(2,713,000)	(2,772,000)	(2,831,000)	(13,569,000)

<sup>++</sup> Unless modified pursuant to Attachment C.

**AMENDMENT NO. 2 TO INTERAGENCY AGREEMENT  
Between METROPOLITAN TRANSPORTATION COMMISSION  
And ASSOCIATION OF BAY AREA GOVERNMENTS  
For PLANNING  
FISCAL YEARS 2014-15 and 2015-2016**

THIS AMENDMENT, effective as of October 28, 2015 is Amendment No. 2 to the Interagency Agreement by and between the Metropolitan Transportation Commission ("MTC") and the Association of Bay Area Governments ("ABAG") for Planning, dated July 1, 2014 (collectively the "Agreement") and as amended on July 1, 2015. This Amendment No. 2 extends the term of the Agreement to June 30, 2015 and applies to planning occurring in Fiscal Year 2015-16.

NOW, THEREFORE, the parties agree to modify the subject Agreement as originally executed, as follows:

1. Section 3.0 Funding is revised to add subparagraph (e) as follows:

(e) Notwithstanding the foregoing, ABAG agrees that any amount of State Planning Funds spent during FY 2014-15 or FY 2015-16 in excess of the \$697,965 amount described in subparagraph (a) above shall offset MTC's \$3,075,092 funding commitment to ABAG for FY 2015-16.

2. Section 3.1 FUNDING FOR FIRST SIX MONTHS OF FY 2015-16, is superseded by the following:

**FUNDING FOR FY 2015-16**

ABAG and MTC mutually agree that MTC shall pay ABAG a total of three million seventy-five thousand ninety-two dollars (\$3,075,092) for Fiscal Year 2015-16. Payment shall be from the following sources in the following amounts:

<b>SOURCE</b>	<b>Payment Amounts for FY 2015-16</b>
General Fund/TDA Planning	\$456,204
FTA 5303 (Toll Credit for match)	\$244,888
FHWA PL (Toll Credit for match)	\$1,015,000
STP 6084 (175)	\$699,000
STP 6084 (187)	\$660,000
<b>Total</b>	<b>\$3,075,092</b>

- (a) In addition to these amounts, \$728,908 (representing \$666,908 to be credited towards MTC's funding commitment for FY 2015-16 as described below plus \$62,000 to cover the ABAG planner referenced below) in state planning funds may be made available to the region in FY 2015-16 to support ABAG's research, planning and implementation activities ("FY 2015-16 State Planning Funds"). ABAG shall make a good faith effort to invoice in a timely manner for eligible expenses against the FY 2015-16 State Planning Funds. MTC and ABAG agree that \$666,908 of the FY 2015-16 State Planning Funds shall be credited toward MTC's funding commitment for FY 2015-16 (which amount together with the \$3,075,092 of funding set forth in the table above equals MTC's \$3,742,000 for FY 2015-16 per the funding framework), provided that the first \$62,000 of FY 2015-16 State Planning funds received by ABAG shall not be credited toward MTC's funding commitment but instead shall be used to cover expenses associated with a new ABAG planner.
- (b) If an amount less than the \$666,908 of FY 2015-16 State Planning Funds applicable to FY 2015-16 is invoiced and received by ABAG, and credited towards MTC's annual funding commitment in accordance with paragraph (a) above, MTC agrees to cover the difference through such other mechanisms as shall be reflected in an amendment to this Agreement prior to April 30, 2016.
- (c) MTC and ABAG shall work cooperatively to develop a plan and identify reasonable parameters for the future fiscal year re-allocation of any unspent portion of the General Fund/TDA Planning funds, subject to the availability of funds and approval of appropriate contract and budget amendments by the Commission for future expenses.
- (d) ABAG agrees that any FY 2015-16 State Planning Funds remaining unspent per subparagraphs (a) and (b) above and any State Planning Funds remaining unspent per Section 3, subparagraphs (a) and (b), of the originally executed agreement shall be carried over into ensuing fiscal years' Interagency Agreements for expenditure by ABAG, and as an offset to MTC's funding commitment to ABAG for those fiscal years, with a goal of providing capacity over the term of the eight-year funding framework to meet anticipated agency expenses and to offset potential lower State funding levels.
- (e) Notwithstanding the foregoing, ABAG agrees that any amounts for FY 2015-16 State Planning Funds spending during FY 2015-16 in excess of \$728,908 amount described in

subparagraph (a) above shall offset MTC's \$3,075,092 funding commitment to ABAG for FY 2015-16.

3. Appendix B, **Funding for First Six Months of FY 2015-16** is revised as follows:

**Funding for FY 2015-16**

WORK ELEMENT 2015-16	FTA (Toll Credit for match)	FHWA (Toll Credit for match)	TDA/ General Fund	STP 6084 (175)	STP 6084 (187)	TOTAL:
Regional planning, modeling, research and outreach, including intergovernmental coordination.	\$244,888	\$1,015,000	\$456,204	\$699,000	\$660,000	\$3,075,092
<b>TOTAL:</b>	\$244,888	\$1,015,000	\$456,204	\$699,000	\$660,000	\$3,075,092

4. Condition for Release of FY2015-16 Funds. Payment for work performed after November 1, 2015 shall be subject to the condition listed in Attachment 1, attached hereto and incorporated herein by this reference.

~~5. Reduction of Amounts Due in the Event of Consolidation. In the event the planning functions of ABAG and MTC are consolidated through action by MTC to offer ABAG planners positions at MTC, the total amount payable to ABAG under this Agreement shall be reduced in an amount equal to \$256,258 times the number of months remaining until June 30, 2016, calculated from the first day of the month succeeding the date any ABAG employee commences employment at MTC. MTC shall apply a corresponding prorata credit to each funding source listed in Appendix B.~~

6. Retention of Contract Provisions. Except as provided herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date indicated above.

METROPOLITAN TRANSPORTATION  
COMMISSION

ASSOCIATION OF BAY AREA  
GOVERNMENTS

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Steve Heminger, Executive Director

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Ezra Rapport, Executive Director

## **Attachment 1**

The condition is as follows:

**Separation of Direct and Indirect Costs:** ABAG shall continue to cooperate with MTC and Caltrans on questions related to costs for personnel that have been charged as direct and also included as part of the indirect pool.

## **Attachment 2**

### **ABAG Administrative Committee Resolution 12-15; Modifying the MTC resolution**

**ASSOCIATION OF BAY AREA GOVERNMENTS  
ADMINISTRATIVE COMMITTEE**

**RESOLUTION NO. 12-15**

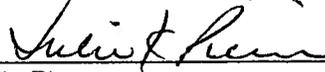
**WHEREAS**, the Metropolitan Transportation Commission (MTC) is considering Resolution 4210, a functional consolidation of the planning departments of MTC and ABAG; and

**WHEREAS**, MTC Resolution 4210 would directly impact ABAG and its personnel.

**NOW, THEREFORE, BE IT RESOLVED**, that ABAG supports Resolution 4210 with the following modifications.

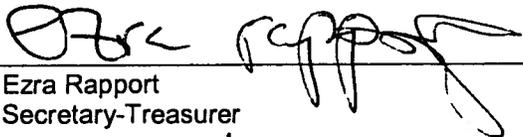
- A. ABAG requests that MTC approve the full FY2015-16 funding for ABAG; and
- B. MTC and ABAG shall expedite the retention of a mutually acceptable consultant to conduct a jointly-funded merger study and a merger implementation plan of MTC and ABAG to be completed by June 1, 2016. The study shall examine the policy, management, financial and legal issues associated with further integration, up to and including institutional merger between MTC and ABAG, and shall set forth the specific plans, benchmarks, and milestones for implementation. This plan shall be referred to as the proposed ABAG/MTC Merger Implementation Plan (MIP). The study and plan shall be governed by the joint MTC Planning and ABAG Administrative committees and be informed by the full participation of designated ABAG and MTC representatives through public meetings governed by the Brown Act, and
- C. In the event ABAG and MTC approve the MIP prior to July 1, 2016, each in its sole discretion, and by formal resolution, the MTC proposal for functional consolidation of planning departments shall be pre-empted and voided.

The foregoing was adopted by the Administrative Committee this 28<sup>th</sup> day of October, 2015.

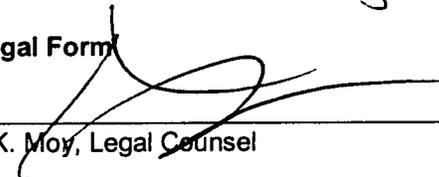
  
\_\_\_\_\_  
Julie Pierce  
President

**Certification of Administrative Committee 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 Administrative Committee of the Association at a duly called meeting held on the 28<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Ezra Rapport  
Secretary-Treasurer

**Approved as To Legal Form**

  
\_\_\_\_\_  
Kenneth K. Moy, Legal Counsel

# **Attachment 3**

**Julie Pierce ABAG Chair  
email to ABAG Staff**

# ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



October 29, 2015

Dear Local Elected Officials,

I am pleased to report that yesterday, Wednesday October 28, 2015, our ABAG Administrative Committee and the MTC Commission voted unanimously to proceed with a study of a full comprehensive merger of our two regional agencies. The original MTC proposal has been put on hold and all energies will be dedicated to this effort. This is a major milestone in our regional planning efforts. I would like to thank Supervisor Dave Cortese, Chair of MTC and ABAG Executive Board member, for leading this effort.

Key points from the resolutions:

- MTC shall provide the remaining six months of FY 2015-16 planning fund with no strings attached.
- MTC and ABAG shall retain a consultant to conduct a merger study and a merger implementation plan of both agencies.
- The study will be directed by the Joint ABAG Administrative Committee and MTC Planning Committee.
- Original proposal to transfer ABAG planners to MTC is put on hold during the merger study.

This means that the hard work begins today, discussing and defining the relationship between the two agencies in a collaborative, positive manner. We have many issues of governance, planning tasks, and organization to define. We all need to be prepared for both challenges and opportunities that we will all face during the next eight months. This process will require not only MTC and ABAG Boards but local jurisdictions and stakeholders participation if we are to create an agency that can truly serve the Bay Area.

Thank you for your engagement and contributions that allowed us to come to this point. Your letters, statements and messages have created a strong voice on the value of local collaboration and dialogue. We are here because of your input.

Cordially,

*Julie*

Julie Pierce  
ABAG President

## **Attachment 4**

# **Charlie Adams rebuttal memo regarding MTC Financial assumptions**

## **REVIEW OF MTC DISCUSSION OF THE FINANCIAL IMPACT OF THE TRANSFER OF PLANNERS FROM ABAG TO MTC**

*The MTC report was prepared and issued without discussion with ABAG Finance personnel and thus; we believe that the report omits some information that lead to different conclusions than those suggested in the MTC report. This review is presented to provide some of the missing information.*

### Current and Future MTC Expense Comparison

MTC projects that MTC will save \$600,000 under the consolidation, but missing from the comparison is the \$1.2 million that MTC proposes to pay to ABAG to compensate for the lost revenue ABAG will require to continue the planning activities not transferred to MTC and the other activities ABAG performs through its enterprise units.

Also, the MTC analysis eliminates \$700,000 of direct and overhead costs currently incurred by ABAG to support the land use planning activity. These expenses are necessary for the performance of the land use planning function and will not be eliminated by transfer of the Planners from ABAG to MTC.

### ABAG Finances

MTC states that ABAG finances are currently precarious. However, ABAG has consistently operated with a balanced budget, and has not experienced an operating deficit within the last five years. The only threat to ABAG's continued financial stability would come from MTC abruptly discontinuing the funding for which they are committed, under the financing agreement adopted in 2013. There was a threat to ABAG's financial stability from a condition attached to the extension of the 2014-15 funding agreement, under which ABAG would have had to refund reimbursements received for services of the Executive Director and Deputy Executive Director for the prior three years. This condition has been removed. The remaining condition to extension of the funding agreement makes reference to questions regarding ABAG's charging of direct and indirect cost. However, MTC is aware that ABAG's cognizant federal agency, the EPA, has audited and approved ABAG's Indirect Cost Allocation Plan and ABAG's procedures for applying direct and indirect costs to federally funded programs. MTC is also aware that Caltrans has confirmed that ABAG is in compliance with federal regulations in following EPA guidelines in its allocation of cost to projects funded by MTC.

MTC references ABAG's \$12 million unfunded pension liability as something unique to ABAG and suggests that it is an indication of poor fiscal management. This characterization is inaccurate, as the unfunded pension liability arose from financial forces not controllable by

ABAG and from CalPERS' failure to recommend adequate funding contributions for several years. As a result, ABAG is in concert with most PERS plans in having unfunded liabilities that are being amortized over periods of 6 to 20 years. The ABAG unfunded liability is 34.1 % of the plan's total accrued liability, which compares to MTC's 23.4% unfunded liability, as a percentage total accrued liability..

MTC described the ABAG retiree medical benefits liability (OPEB) of \$5 million as under-funded. This is an incorrect description, as the plan was not established with a concept of the actuarial liability being fully funded upon creation of the plan, but with the intention to fund the plan at a rate that would cover current expenses and move to full funding over time. The ABAG unfunded liability is similar to the \$11 million unfunded liability that MTC has for its OPEB. As with many of these plans, the escalation of medical cost made ABAG's plan a financial burden and new enrollment to the original plan was terminated in fiscal year 2013-14. The current annual contribution for OPEB of approximately \$700,000 is established at a level sufficient to fund current expenses and to provide reserves for future claims. It is projected that the plan will be fully funded by 2022.

MTC states that recording of the unfunded pension liability of \$12 million (A requirement of a new governmental accounting standard.) will transform ABAG's unrestricted fund balance to a \$9 million deficit. While it is technically true that ABAG's Balance Sheet will show a deficit fund balance, the financial health of ABAG will not have changed, and if ABAG is allowed to continue to operate at its current level, the liability and deficit will be eliminated by 2037.

MTC poses the question of further revelations regarding the FAN embezzlement. The ABAG Executive Director has stated that the FAN embezzlement is limited in its impact to the FAN, and that all other ABAG operations and component entities will not be adversely affected by the embezzlement. This statement remains true as ABAG and FAN proceed with a confidential internal investigation.

#### ABAG OVERHEAD FAIRLY ALLOCATED ?

MTC states that MTC planning funds represent only 15% of all ABAG revenue. This statement is made to establish a basis for the assertion that MTC planning is allocated a disproportionate share of ABAG overhead. This statement is misleading, as it is based on ABAG's total revenue of \$26 million, which includes \$12 million of pass-through funds. The correct comparison is to compare MTC planning funds to the true ABAG revenue of \$14 million. *Pass-through funds are funds such as the BayREN energy conservation rebates paid to property owners who make energy saving improvements to their property.* The correct calculation shows MTC planning funds of \$3.9 million to be 28% of total ABAG revenue.

MTC states that MTC funding source absorbs 74% of “distributed” overhead, and this computation is made to support the argument that ABAG overhead is unfairly allocated. However, this concept of “distributed ” overhead is not valid for this purpose as it looks only at overhead distributed to MTC as a percentage of overhead recovered by ABAG Agency Management. The correct comparison is to compare the overhead charged to MTC to ABAG’s total overhead cost. ABAG’s Indirect Cost Allocation Plan, which MTC has reviewed, clearly shows that total overhead is \$3.2 million, and the overhead allocated to MTC funding is \$1.2 million. This is 38%, not 74%.

MTC states that MTC is assessed overhead at 45%, while Enterprise funds are assessed at 24%. Actually, all enterprises and programs serviced by ABAG are assessed at the same EPA approved indirect cost rate of 44.95%. The single exception in the application of the overhead rate occurs with the San Francisco Estuary Partnership (SFEP), for which overhead costs are specifically tracked as services are provided. The overhead charged to SFEP is lower than that charged to other projects because SFEP is not housed in the Metro Center and it receives substantial administrative support from the State Water Resources Control Board.

#### ABAG Pension Liability: Independent Review

The statement by MTC that ABAG’s PERS and OPEB costs will be reduced proportionate to the reduction in payroll is correct for current costs, but it ignores the impact on ABAG of having to fund the fixed cost of the \$12 million unfunded pension liability and the OPEB actuarial liability of \$5 million. Until fiscal year 2015-16, the amortization of the unfunded pension liability was computed as a percentage of estimated payroll, and the dollar amount would rise or fall proportionately with increases and decreases in payroll costs. Beginning in FY 2015-16, amortization is set at a dollar amount, which for FY 2015-16 is \$1,085,876. This payment is billed to ABAG monthly as a fixed amount of \$90,490. Thus if transfer of Planners were to reduce ABAG’s payroll 25% from \$7.0 million to \$5.25 million, the amortization of the \$12 million unfunded liability would remain at \$1,085,876, effectively increasing the rate from 15.5% of payroll to 20.7% of payroll.

In order for the transfer of Planners from ABAG’s payroll to not adversely impact ABAG’s ability to maintain full funding of its pension liability, MTC would need to provide an immediate one-time contribution of \$3 million to reduce the unfunded pension liability.

Similarly, ABAG has an Actuarial Accrued Liability for its Retiree Healthcare Plan of \$4.7 million, which is being amortized as part of ABAG’s annual payroll expense of \$7 million. If ABAG’s payroll is reduced 25%, an immediate one-time payment of \$1.2 million would be required in order to avoid an adverse impact on ABAG’s ability to honor this commitment to its

approximately 61 active and retired employees, who have earned benefits provided by this plan.

### Continued ABAG Funding

MTC has significantly underestimated the impact of the transfer of Planners by ignoring the fixed cost nature of the \$12 million Unfunded Pension Liability and the \$4.7 million Actuarial Accrued Liability for its Retiree Healthcare Plan. MTC also dismisses the \$600,000 budget shortfall it admits will occur under its plan, by saying it is just 2% of ABAG's budget. ABAG'S operating budget is \$14 million, and will drop to approximately \$11 million under the MTC proposal; thus the \$600,000 short fall would be 5.5% of the revised ABAG budget.

Also, the MTC analysis does not provide for any decline in membership dues that may be expected if ABAG loses its responsibility for land use planning. Nor does the MTC analysis address the detrimental effect of the reduced infrastructure on ABAG's ability to retain its current grants and enterprise activities.

# **Attachment 5**

## **Board Retreat Draft Agenda for December 15<sup>th</sup> Retreat**



Association of Bay Area Governments

## Board of Directors - Retreat

December 15<sup>th</sup>, 2015

9:00 a.m. – 4:00 p.m.

Tiburon Lodge – Mainsail Ballroom  
1651 Tiburon Blvd.  
Tiburon, CA 94920

*Networking and Continental Breakfast:  
9:00 a.m. to 9:30 a.m.*

*Board Meeting:  
9:30 a.m. to 4:00 p.m.*

### Agenda

- 9:30am 1. Call to Order – Opening Remarks; Kevin Bryant – Chair
- 9:35am 2. Roll Call
- 9:45am 3. Public Comments
- 9:50am 4. Board Meeting Minutes –  
**Action:** *Approval of Minutes - June 24<sup>th</sup>, 2015*
- 10:00am 5. Team Exercise; “Risk Management Bingo”
- 10:30am 6. Climate Change Presentation – Rebecca Verity; AECOM  
Resilience Planning Presentation – Arietta Chakos; ABAG
- 12:30pm Lunch
- 1:30pm 7. PLAN Performance – Highlights (Financial/Actuarial/RM Panel)
- 2:30pm 8. Executive Committee Update – Strategic Planning Discussion
- 3:30pm 9. Other Business
- 4:00pm 10. Adjourn