

# ATTACHMENT 1

## MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN DIEGO AND THE OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT

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This Memorandum of Understanding (MOU) is dated as of \_\_\_\_\_, 2018 (Effective Date), and is entered into by and between the OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT, a public body, corporate and politic (District), and the CITY OF SAN DIEGO, a municipal corporation (City). District and City are sometimes referred to in this MOU, individually, as a “Party” and, collectively, as the “Parties.” The Parties enter into this MOU with reference to the following recited facts (each, a Recital):

### RECITALS

A. The California Legislature enacted California Government Code (Code) sections 53398.50 through 53398.88 (EIFD Law) authorizing cities and counties to form enhanced infrastructure financing districts and use specified property tax increment revenue generated within such districts to finance certain infrastructure and community benefit projects; and

B. In enacting the EIFD Law, the California Legislature found and determined that with the dissolution of redevelopment agencies, public benefits will accrue, if local agencies finance public infrastructure and community benefit projects authorized under the EIFD Law; and

C. The Council of the City of San Diego (Council) adopted Resolution R-310937, effective February 13, 2017, as amended by Council Resolution R-310971, effective March 15, 2017, determining that it will be beneficial to the City of San Diego (City) to establish, and stating the Council’s intent to establish, the District with boundaries coterminous with the Otay Mesa Community Planning Area (Territory) identified in the Otay Mesa Community Plan adopted by the Council in Resolution R-308810, effective March 25, 2014, and amended by the Council in Resolution R-309773, effective June 11, 2015; and

D. The Council also adopted Resolution R-310938, effective February 13, 2017, establishing the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority (Authority) to act as the governing board of the District, all in accordance with the EIFD Law; and

E. The Authority directed the City’s Debt Management Director to prepare an Infrastructure Financing Plan (IFP) for the District; and

F. The IFP was approved by the Council in its Resolution R-311204, effective June 30, 2017; and

G. The IFP was adopted by the Authority in its Resolution OMPFA-2, effective July 24, 2017;

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H. The Authority established the District by its Resolution OMPFA-2, effective July 24, 2017; and

I. The IFP provides for the District to financially assist certain City public infrastructure projects identified in the City's Otay Mesa Public Facilities Financing Plan adopted by the Council in its Resolution R-308811, effective March 25, 2014, and amended by the Council in its Resolution R-309815, effective July 16, 2015 (PFFP); and

J. City and District desire to provide for an efficient process for District to provide financial assistance to the identified City infrastructure projects and for City to provide staff resources for the efficient operation of the District;

NOW THEREFORE, in consideration of the above Recitals, the covenants, conditions and agreements set forth in this MOU, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** For the purposes of this MOU, the terms listed below are defined as follows:

- 1.1. Authority. Defined in Recital D.
- 1.2. Available Funds. Defined in Section 3.1.
- 1.3. CIP. Defined in Section 3.
- 1.4. City. Defined in the initial paragraph of this MOU.
- 1.5. City Representative. Defined in Section 12.
- 1.6. Council. Defined in Recital C.
- 1.7. District. Defined in the initial paragraph of this MOU.
- 1.8. District CIPs. Defined in Section 3.
- 1.9. Effective Date. Defined in the initial paragraph of this MOU.
- 1.10. Federal. Relating to the federal government of the United States of America.
- 1.11. Fiscal Year. Each twelve month time period starting on July 1 and ending on June 30 occurring during the Term.
- 1.12. IFP. Defined in Recital E.
- 1.13. Notice. Any consent, demand, designation, election, notice or request relating to this MOU. All Notices must be in writing.

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- 1.14. Notify. To give a Notice.
- 1.15. PFFP. Defined in Recital I.
- 1.16. Reporting Period. Each calendar month during the Term.
- 1.17. District Representative. Defined in Section 13.
- 1.18. State. The State of California.
- 1.19. Term. Defined in Section 2.

2. **TERM**. This MOU shall commence on the Effective Date, subject to approval by the City Attorney in accordance with San Diego Charter section 40, and shall continue until the fifth anniversary of the Effective Date, subject to the rights of the Parties under Section 7 (Term). Notwithstanding any provision of this MOU to the contrary, the Term shall not exceed the duration of the District.

3. **ANNUAL INFRASTRUCTURE PROGRAM PROCESS**. City and District acknowledge and agree that all of the public infrastructure projects identified in the IFP for financing by District (District CIPs) are identified in the PFFP and part of a larger group of City capital improvement projects (CIPs) that will be designed, contracted for and constructed by City, by private entities pursuant to reimbursement agreements with City for City to reimburse costs of construction of the capital improvements to the private entities, or by other public entities pursuant to contribution agreements with City for City to reimburse costs of construction of the capital improvements to the public entities. City and District further acknowledge and agree that City annually prioritizes CIPs throughout the City for implementation pursuant to Council Policy 800-14, including District CIPs.

3.1. **Implementation**. In order to provide for implementation of District CIPs, City and District agree that, by the end of the third Fiscal Year quarter of each Fiscal Year during which this MOU is in effect, City shall deliver to District a list of the District CIPs that City plans to implement (whether one or more project phases or the complete District CIP) during the immediately following Fiscal Year and request District approval of funding for such District CIPs.

3.1.1. To the extent that District has funds currently on-hand and/or that are projected to be received and available (not previously committed to District operating expenses in the applicable District Fiscal Year budget or other District CIPs identified by City for implementation) to finance District CIPs (Available Funds), District shall consider allocation of such Available Funds to City for the District CIPs identified for implementation in the immediately following Fiscal Year, in the order of priority presented by City.

3.1.2. Allocation of funds projected to be received is subject to actual receipt of such funds by the District. The amount of Available Funds allocated to any District CIP shall be equal to the estimated cost of such District CIP not funded from other financing sources, until District has no more Available Funds or the amount of the estimated cost of such District CIP not funded from other financing sources has been allocated to City, whichever occurs first.

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**3.1.3.** District shall consider allocation of Available Funds to City for the District CIPs identified for implementation in the immediately following Fiscal Year, to the extent practical, by the end of the third Fiscal Year quarter of each Fiscal Year, or as otherwise docketed for consideration by the District.

**3.2.** Funding Reallocation. If and to the extent that City's priorities change for District CIPs identified for implementation, whether due to emergency, unforeseen circumstances accelerating or slowing project progress, other funding becoming available, increasing or decreasing costs, etc., City may reallocate all or a portion of money allocated by District to specific District CIPs among other District CIPs allocated funding by District, as long as the net reallocation does not result in a net increase in the total amount of District money allocated to District CIPs.

**3.2.1.** City shall send a copy of each City annual appropriations ordinance adopted during the Term to District for the purpose of notifying District of City's approved final CIP budget. City shall only spend money from District on District CIPs in accordance with City's then current process for budgeting and executing CIPs.

**3.2.2.** If and to the extent that a District CIP allocated funds by District will not proceed to completion of the entire project, phase(s), or other elements for which District provided funding, such funding shall be either allocated by City to another District CIP allocated funding by District or returned to District.

**4. DISTRICT BUDGET.** District will endeavor to adopt a budget for its operating expenses and District CIP expenditures for District's immediately following Fiscal Year by the end of the third Fiscal Year quarter of each Fiscal Year. District's operating expense portion of its budget shall include funds allocated to reimburse City for staff services provided to District pursuant to Section 5. When City delivers to District the list of District CIPs that City plans to implement during the immediately following Fiscal Year, pursuant to Section 3, City shall also deliver a budget estimate to District for City staff services and District program operating expenses to District for the immediately following Fiscal Year.

**5. CITY STAFFING OF DISTRICT.** City shall provide the staff for the District as described in Exhibit B attached to this MOU. District shall pay City for the documented time of City staff who provide staff services to District at each person's then applicable hourly City salary rate, including applicable overhead and load. All City staff expenses incurred by District shall be billed to District and paid to City using a billable internal order of City.

**5.1.** At the request of District, City shall send detailed accounting records of City staff costs incurred in staffing the District. The costs of City staff incurred by District shall accrue during any time period that District does not have revenue to pay such costs and shall be payable when District has revenue available to pay such costs.

**6. COMPLIANCE WITH LAWS AND POLICIES.** The Parties shall comply with all applicable laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, and policies of the Federal, State, City and other local governments (including the City Charter, the San Diego Municipal Code, City Council Policies, and City Administrative Regulations), to the extent applicable to their performance under this MOU.

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**7. REMEDIES FOR NON-PERFORMANCE.** Notwithstanding any provision of this MOU to the contrary, if a Party fails to comply with any term or condition of this MOU, the other Party may exercise any or all of the following remedies: (a) any remedy specified in this MOU for such non-performance; or (b) any remedy available to the Party at law or in equity for such non-performance. The rights and remedies of the Parties under this MOU are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or deny any of a Party's other rights or remedies under this MOU, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to a Party.

**8. INFORMAL DISPUTE RESOLUTION.** If the Parties have any dispute as to their respective rights, obligations, or duties under this MOU, or the meaning or interpretation of any provision contained in this MOU, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five (5) calendar days of determining the existence of any such dispute, the Party determining there is such a dispute may give Notice to the other Party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor, thereafter, to meet within five (5) calendar days of the second Party's receipt of such Notice, or at such time as is reasonable under the circumstances.

**9. DISTRICT INDEMNIFICATION OF CITY.** District shall defend, indemnify, protect, and hold harmless City, its elected officials, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including injury to Authority members or District officers, employees, invitees, guests, or agents that arise from, or are connected with, or are caused, or claimed to be caused by, this MOU, or by one or more acts or omissions of District, Authority members, or Authority or District officers, employees, invitees, guests, or agents in performing this MOU, and all expenses of investigating and defending against same, including attorney's fees and costs. However, District's duty to indemnify and hold harmless pursuant to this Section 9 shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, officers, employees, representatives, or agents. City may, at its sole discretion, conduct or participate in its own defense of any claim subject to this Section 9. If City elects to conduct or participate in its own defense, or obtain independent legal counsel in defense of any claim subject to this Section 9, District shall pay City for all costs related thereto, including attorney's fees and costs. District shall pay City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Section 9.

**10. CITY INDEMNIFICATION OF DISTRICT.** City shall defend, indemnify, protect, and hold harmless District, its Authority members, and District or Authority, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including injury to City's elected officials, officers, employees, invitees, guests, or agents that arise from, or are connected with, or are caused, or claimed to be caused by, this MOU, or by one or more acts or omissions of City, its elected officials, officers, employees, invitees, guests, or agents in performing this MOU, and all expenses of investigating and defending against same, including attorney's fees and costs. However, City's duty to indemnify and hold harmless pursuant to this Section 10 shall not include any claims or liability arising from the established sole negligence or willful misconduct

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of District, Authority members, or District or Authority officers, employees, representatives, or agents. District may, at its sole discretion, conduct or participate in its own defense of any claim subject to this Section 10. If District elects to conduct or participate in its own defense, or obtain independent legal counsel in defense of any claim subject to this Section 10, City shall pay District for all costs related thereto, including attorney's fees and costs. City shall pay District any and all costs District incurs enforcing the indemnity and defense provisions set forth in this Section 10.

**11. NOTICE.** In all cases where Notice is required under this MOU, Notice may be given by electronic mail, messenger, nationally recognized overnight (one-business day) courier, or United States Postal Service first class mail. A Notice shall be effective on the date sent by electronic mail, if sent before 3:00 p.m. Pacific Time, the date personally delivered by messenger to the Notice recipient, the first business day after deposit with an overnight courier for next business day delivery, or the third business day after the Notice is deposited with the United States Postal Service, in each case with all applicable postage or delivery costs paid and addressed to City or District as specified in Exhibit A. City or District may change its Notice address by Notice delivered in accordance with this Section 11.

**12. CITY REPRESENTATIVE.** City's Planning Department is City's contract administrator for this MOU. The first person identified in Exhibit "A" to this MOU to receive notices on behalf of City shall be City's representative for all purposes of this MOU (City Representative). The City Representative shall communicate with District on all matters related to this MOU. When this MOU refers to communications to or with City, those communications shall be with the City Representative, unless this MOU or the City Representative specifies otherwise. When this MOU refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his or her designee, unless this MOU specifies otherwise. City, at its sole discretion, may change the identity of the City Representative at any time by Notice to District.

**13. DISTRICT REPRESENTATIVE.** The person identified in Exhibit "A" to this MOU to receive Notices on behalf of District shall be District's representative for all purposes of this MOU (District Representative). The District Representative shall communicate with City on all matters related to this MOU. District may change the identity of the District Representative by Notice to City at least ten (10) calendar days in advance of the effective date of such change.

**14. NO ASSIGNMENT.** Neither Party shall have any right to assign all or any portion of this MOU to a third person. Any putative assignment of either Party's rights, obligations, or duties under this MOU shall not create a contractual relationship between the other Party and any putative assignee, and any such assignment shall be ineffective, null and void. Any assignment in violation of this Section 14 is grounds for immediate termination of this MOU, at the sole and absolute discretion of the Party not making the assignment.

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### 15. MISCELLANEOUS PROVISIONS.

**15.1. Governmental Powers.** Nothing contained in this MOU shall be construed as a limitation upon the powers of City, as a chartered city of the State, or the District, as a public body, corporate and politic.

**15.2. Governing Law.** The terms and conditions of this MOU shall be construed and interpreted in accordance with the laws of the State.

**15.3. Jurisdiction and Venue.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this MOU.

**15.4. Integration and Amendment.** This MOU, and the exhibits attached to this MOU, fully express all understandings of the Parties concerning the matters covered in this MOU. Any and all prior negotiations and agreements between the Parties regarding the subject matter of this MOU are merged into this MOU. No change, alteration, amendment, or modification of the terms or conditions of this MOU, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written amendment to this MOU signed by both Parties. The Parties agree to enter into any and all amendments to this MOU that are necessary to comply with any and all new or modified Federal or State laws affecting this MOU.

**15.5. No Waiver.** No failure of either City or District to insist upon the strict performance by the other of any term, covenant, or condition of this MOU, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this MOU, shall constitute a waiver of any such breach or the requirement to comply with such term, covenant, or condition. No waiver of any breach shall affect or alter this MOU, and each and every term, covenant, and condition, in this MOU shall continue in full force and effect regarding any existing or subsequent breach.

**15.6. Successors in Interest.** This MOU, and all rights, obligations, or duties under this MOU, shall be in full force and effect, whether or not any Party to this MOU has been succeeded by another entity, and all rights, obligations, or duties under this MOU shall be vested and binding on any Party's successor in interest, subject to the limitations in this MOU on assignment of this MOU.

**15.7. Severability.** The unenforceability, invalidity, or illegality of any provision of this MOU shall not render any other provision of this MOU unenforceable, invalid, or illegal.

**15.8. Conflicts between Terms.** If an apparent conflict or inconsistency exists between the main body of this MOU and any exhibit attached to this MOU, the main body of this MOU shall control. If a conflict exists between an applicable Federal, State, City, or other law, rule, regulation, order, or code and this MOU, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this MOU, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent

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requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this MOU.

**15.9. Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this MOU. A word, term or phrase defined in this MOU may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this MOU. The words “include” and “including” in this MOU shall be construed to be followed by the words: “without limitation.” Each collective noun in this MOU shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this MOU, refers to such document, as modified from time to time (excepting any modification that violates this MOU), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this MOU includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this MOU refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

**15.10. Counterparts.** This MOU may be signed in multiple counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had signed the same MOU.

**15.11. Headings.** All headings in this MOU are for convenience of reference only and shall not affect the interpretation of this MOU.

**15.12. Exhibits Incorporated.** All exhibits referenced in this MOU are incorporated into this MOU.

**15.13. Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this MOU, and all continuing obligations set forth in this MOU, shall survive expiration or earlier termination of this MOU.

**15.14. Incorporation of Recitals.** The Recitals preceding this MOU are true and correct and are incorporated into and made a part of this MOU.

**15.15. Time of Essence.** Time is of the essence of each provision of this MOU, unless otherwise specified in this MOU.

**[Signatures on following page.]**



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IN WITNESS WHEREOF, this MOU is entered into by the City, acting by and through its Mayor or designee, and by District, by and through the signature of District's authorized representative(s), all as set forth below.

CITY OF SAN DIEGO,  
a municipal corporation

OTAY MESA ENHANCED  
INFRASTRUCTURE FINANCING  
DISTRICT, a public body, corporate and  
politic

By: \_\_\_\_\_  
Stacey LoMedico  
Assistant Chief Operating Officer

By: \_\_\_\_\_  
David Alvarez  
Chair

APPROVED AS TO FORM:

APPROVED AS TO FORM:

MARA W. ELLIOTT  
City Attorney

MARA W. ELLIOTT  
General Counsel

By: \_\_\_\_\_  
Brant Will  
Deputy City Attorney

By: \_\_\_\_\_  
Delmar G. Williams  
Deputy City Attorney

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## EXHIBIT A

### Notice Addresses

#### **CITY:**

City of San Diego  
Planning Department  
Attn: Financial and Administrative Services Manager  
1010 Second Avenue, Suite 600  
East Tower, M.S. 606F  
San Diego, CA 92101  
E-Mail: mcamacho@sandiego.gov

City of San Diego  
Debt Management Department  
Attn: Otay Mesa EIFD Coordinator  
202 C Street, 7th Floor  
San Diego, CA 92101  
E-Mail: dmsupport@sandiego.gov

#### Copy to:

City Attorney  
City of San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101  
E-Mail: BWill@sandiego.gov

#### **DISTRICT:**

Otay Mesa Enhanced Infrastructure Financing District  
Attn: Chair  
202 C Street, 10th Floor  
San Diego, CA 92101  
E-Mail: davidalvarez@sandiego.gov

#### Copy to:

District Counsel  
c/o City Attorney  
City of San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101  
E-Mail: DGWilliams@sandiego.gov

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## **EXHIBIT B**

### **City Staffing of the District**

City will provide the following generally described staff support to the District pursuant to this MOU:

#### **DEBT MANAGEMENT**

1. Periodic:
  - a. Coordinate filing and other actions with state and county to effectuate the allocation of tax increment revenue (TI) to the District
  - b. Bond Election. Work with District legal counsel and the District Clerk to prepare ballot materials and bond election authorization for District approval, conduct the election through the County Registrar of Voters, and prepare the bond results action for District approval.
  - c. As bond issuances occur:
    - i. Conduct request for proposal process to retain necessary outside consultants (e.g., bond counsel, municipal advisor, underwriters, fiscal consultant, bond trustee, POS/OS printer, etc);
    - ii. Conduct bond issuance process, by working with Bond Counsel and other outside consultants, District legal counsel, and City Planning, Financial Management, and Public Works Departments to: structure financing, develop the Preliminary Official Statement/Official Statement and financing documents, take the transaction and financing documents to the District for approval, and conduct the marketing, pricing, and closing of the transactions;
    - iii. Perform post-issuance bond work, including debt service payments, preparation of annual reports under federal securities laws, and preparation of bond issuance related reports under state law; and
    - iv. Provide on-going surveillance of outstanding bond issues for refinancing opportunities.
2. Ongoing:
  - a. Research and monitor District tax increment revenue (TI) and coordinate with Planning and Financial Management for budgeting purposes;
  - b. Perform post-issuance bond work, including debt service payments, preparation of annual reports under federal securities laws, and preparation of bond issuance related reports under state law;
  - c. Provide on-going surveillance of outstanding bond issues for refinancing opportunities.

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## **COMPTROLLER**

1. Accounting structure updating, monitoring, and processing.
2. Revenue and expense tracking, reporting, and processing.
3. Annual Financial Statement preparation for inclusion in City's Comprehensive Annual Financial Report (CAFR).
4. Other District financial support and reporting, as required.

## **FINANCIAL MANAGEMENT**

1. Providing capital planning and budgeting guidance to Planning Department and asset managing departments;
2. Budgeting CIPs and debt service as needed; and
3. Monitoring budgets and implementing changes as needed (e.g. budget adjustments, transfers etc.).

## **PLANNING DEPARTMENT**

1. Consult as needed on IFP.
2. Ongoing Basis:
  - a. Prepare and coordinate review and approval of the annual capital and operating budget of the District.
  - b. Monitoring of District tax increment revenue (TI);
  - c. Evaluating the available TI for funding District-eligible CIP projects;
  - d. Coordinate with City asset managing departments, City Public Works Department, and Financial Management Department to facilitate required reviews and approvals of program TI funds for expenditure and bond issuances.
  - e. Coordinate with City asset managing departments, City Public Works Department, and Financial Management Department to identify projects and costs for inclusion in a bond issuance.

## **CITY ATTORNEY**

1. Provide general legal services to District, as requested.

## **CITY CLERK**

1. Publishing any resolution of intent to issue bonds;
2. Complete all tasks as the elections official for the conduct of Authority bond authorization elections pursuant to the EIFD Law. Such tasks include but are not limited to:

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- a. Work with City Debt Management Department and the City Attorney's Office to prepare ballot materials for the bond election;
- b. Work with the County of San Diego Registrar of Voters to provide direction and cost estimates for the bond election;
- c. Prepare an election calendar, as requested, based on a projected election date; and
- d. Administer the election.

### **COUNCIL OFFICE**

1. Create, distribute and post Authority meeting agendas/notices at the direction of the Chair and in compliance with the Brown Act;
2. Act as the Authority Coordinator at the meetings of the Authority and record all votes;
3. Keep or cause to be kept the record of actions of all meetings of the Authority, with the time and place of holding and whether regular or special; and
4. Arrange for any special requests or circumstances for meeting management (i.e. off-site meetings, ADA requests, translation services, etc).