

**NONCORE NATURAL GAS SALES AND
AGGREGATION AGREEMENT**

By and Between

ABAG POWER

and

(Name of Public Agency)

For service within the territory of
Pacific Gas & Electric Company

NONCORE NATURAL GAS SALES AND AGGREGATION AGREEMENT

This Noncore Natural Gas Sales and Aggregation Agreement, hereinafter "Agreement", is made and entered into as of this _____ day of _____, 200__, by and between the ABAG Publicly OWned Energy Resources, a California joint powers agency, hereinafter "ABAG POWER", and the _____ (name of public agency), a _____ (charter/general law city or county or special district), hereinafter "Public Agency".

The parties hereby agree as follows:

1. Eligibility: Public Agency is a member of ABAG POWER. ABAG POWER shall provide directly or, at its option, shall contract to provide coordination services for the purchase and management of a natural gas program for members of ABAG POWER participating in said program [Participant(s)].
2. Authorities: Public Agency is a customer of PG&E for natural gas distribution services. Public Agency appoints ABAG POWER as its exclusive agent to coordinate its participation in PG&E's Noncore Transportation Program for the facilities listed in Exhibit A, which is attached hereto and incorporated herein by this reference. All parties understand and agree that the natural gas service under this Agreement will be provided under the terms of the various Pacific Gas and Electric Company Rules and Schedules for noncore customers. Public Agency represents and warrants that any prior noncore transportation authorizations which Public Agency may have executed for the facilities listed in Exhibit A will be terminated effective no later than the date of this authorization.
3. Services: ABAG POWER shall deliver, or cause to delivered, the following services to Public Agency:
 - 3.1 Analyze and evaluate natural gas supply and transportation strategies;
 - 3.2 Negotiate and implement natural gas purchase, transportation and other similar gas services for Public Agency and Participants;
 - 3.3 Perform nominations of natural gas supply and transportation services on behalf of Public Agency's facilities as listed in Exhibit A;
 - 3.4 Monitor gas account imbalances with transporters;
 - 3.5 Generate invoices for all natural gas purchases and services necessary for ABAG POWER to perform as required under the Agreement, except for PG&E distribution charges billed by PG&E directly to Public Agency. Invoices will include the following information:
 - 3.5.1 For each facility listed in Exhibit A, the monthly usage, gas charges, including, but not limited to, ABAG POWER operational and administrative fees.
 - 3.5.2 The status of the account identifying the prior account balance, any payments since the previous invoice, current charges plus any applicable late payment charges and credit balances as calculated pursuant to Paragraph 10.3; and

3.6 Provide general consultation services.

4. Enrollment Notification of Changes: Public Agency shall through Exhibit A, which is incorporated herein, submit to ABAG POWER its list of accounts to be served hereunder. Public Agency shall also notify ABAG POWER forty-five (45) days in advance of changes in Public Agency's facilities or operations which are reasonably expected to increase or decrease the consumption of natural gas more than ten percent (10%) as compared to historical levels. Public Agency may add facilities to Exhibit A upon prior written notice to ABAG POWER. Public Agency may delete facilities from Exhibit A only upon written consent by ABAG POWER, which consent shall not be unreasonably withheld, except that Public Agency may delete facilities without ABAG POWER's consent if Public Agency abandons the facility or transfers the facility to another entity.

5. Gas Balancing Compliance: For each account listed in Exhibit A, Public Agency shall fill out an Estimated Annual Usage form (see attached). Agency is responsible for updating this form and keeping ABAG POWER and its scheduling agent informed of operational changes that will affect gas usage. Agency shall be responsible for all balancing and Rule 14 Operational Flow Order (OFO), Emergency Flow Order (EFO) and diversion noncompliance charges that result from its gas usage being different from that shown on the Estimated Usage form (see PG&E gas tariff G-BAL and Rule 14).

6. Agency Relationship: Public Agency authorizes ABAG POWER to act as its exclusive agent for the Program and does hereby constitute and appoint an authorized officer or agent of ABAG POWER to act on its behalf as its lawful agent for the implementation of the Program. This authorization shall include the right to do and perform all acts, with full power to execute all documents requisite and necessary to be done in all matters relating to the purchase, sale, and transportation of natural gas. Therefore, Public Agency authorizes ABAG POWER to take actions appropriate to establish and implement the Program, including, but not limited to:

6.1 Aggregating the gas supplies and services of Public Agency with those of other Participants in conjunction with providing such gas supplies and services to Public Agency and pursuant to the terms and conditions of the Program;

6.2 Executing local distribution company riders and other documentation on behalf of Public Agency;

6.3 Nominating gas supplies on behalf of Public Agency;

6.4 Handling gas imbalances and all other operational transactions with PG&E in order to deliver gas to PG&E for subsequent redelivery to Public Agency; and

6.5 Arranging for payment of natural gas, transportation and other program expenses. Note, PG&E distribution costs shall be paid by Public Agency directly to the utility (PG&E). Public Agency understands and agrees that in the event of nonpayment by ABAG POWER, Public Agency will be responsible for payment of Public Agency's bills for gas and services, even if the Public Agency has already made payment to ABAG POWER for those gas quantities and services.

7. Title: All purchase, transportation and other gas service contracts shall be in the name of ABAG POWER, with the exception that upon prior consent by both parties, Public Agency may retain its own

contract for interstate transportation. ABAG POWER may agree to manage said transportation on behalf of Public Agency.

8. Term: Subject to the provisions of Paragraphs 13 and 14 hereof, and receipt of timely notifications of alternative arrangements, this Agreement shall be in full force for a three (3) year term commencing July 1, 2004. Subject to Paragraph 14 and commencing July 1, 2005, the term of this Agreement shall be automatically extended for additional 3-year periods on each July 1 provided ABAG POWER is not in breach of this Agreement, and provided that Public Agency has not submitted on or before June 1 written notice of its decision to terminate the Agreement effective the July 1 three (3) years after said notice.

9. Fees: The operational fees for all services described in Paragraphs 3 and 6 shall be established by the ABAG POWER Board of Directors, hereinafter "Board".

10. Payment:

10.1 On a monthly basis, unless otherwise approved by Public Agency, ABAG POWER will provide, or cause to be provided, to Public Agency an invoice as described in Paragraph 3.5. Invoices will be directed to and payment is to be made directly by Public Agency to the escrow account designated pursuant to Paragraph 11 of this Agreement. Payment is due immediately upon receipt of the invoice. Late payment charges at the rate of one and a half percent (1.5%) per month calculated daily on the outstanding balance will be imposed commencing on the thirty-first (31st) day after the mailing date of the invoice.

10.2 Upon approval of this Agreement by ABAG POWER, Public Agency shall pay a working capital deposit to ABAG POWER prior to transferring any accounts to the ABAG POWER program. This deposit is refundable when Public Agency leaves the program and all liabilities to ABAG POWER have been satisfied. The currently approved working capital deposit is calculated as follows:

[Two times the average monthly load (therms) times the current applicable rate (\$/therm).]

10.3 Any disputes between the parties regarding the amount of any Actual Charges shall be resolved pursuant to Section H of Exhibit B, other Standard Contract Provisions, which is attached hereto and incorporated herein by this reference and the working capital deposit, as defined in Paragraph 10.5, will be adjusted as soon as practicable to reflect the resolution of the dispute.

10.4 After the end of each fiscal year, ABAG POWER will perform a "true-up" by calculating the difference between the Invoiced Amounts and the Actual Charges. Any difference in these amounts will be debited or credited (as appropriate) to the Public Agency in equal installments over the remaining program year's invoices.

10.5 In accordance with the terms of Paragraph 11, ABAG POWER will first apply the Invoiced Amounts to the payment of Actual Charges. Public Agency acknowledges that during the term of this Agreement ABAG POWER has the right to use working capital deposit to pay Actual Charges incurred by other Participants in the Program as such Actual Charges become due. Such use of the monies will not be a debit against the working capital deposit and will not obviate, eliminate or modify ABAG POWER's obligation to pay Public Agency the working capital deposit amount pursuant to Paragraph 14.3. ABAG POWER retains the right to modify Invoiced Amounts to increase the sum of working capital deposit in the Program in order to timely pay Actual Charges as they become due.

10.6 The initial invoice will be dated _____ and must be paid by _____ (Start Date), or this Agreement terminates on _____. Upon prior written notice to Public Agency, ABAG POWER may delay the Start Date to accommodate Program requirements.

10.7 In the event Public Agency fails to make timely payment, consistent with the terms employed by ABAG POWER, in addition to any other remedy it may have hereunder and notwithstanding the existence of any late payment penalty, ABAG POWER may declare Public Agency to be in default and terminate the agreement. ABAG POWER is further authorized to bill Public Agency for reasonable charges associated with demands for payment on late accounts as well as reasonable charges associated with suspension and resumption of service hereunder.

11. Disbursement of Funds: Subject to the terms and conditions of this Agreement, ABAG POWER agrees to provide for sale and delivery, and Public Agency agrees to receive and to pay ABAG POWER for natural gas. Further, Public Agency agrees to pay for the Actual Charges.

11.1 An escrow account for the purposes of receiving payments by Participants and making payments to the utilities, the gas supplier and other payees as authorized by ABAG POWER will be established.

11.2 The instructions for this escrow account have been approved by ABAG POWER, and shall include a list of the authorized recipients of payments from the account.

11.3 Only ABAG POWER may authorize release of funds from the escrow account, and such shall only be to those payees identified in the escrow instructions.

12. Gas Program Pricing:

12.1 Allocation: The gas charges for the Program will include the (a) cost of the gas commodity (gas charges), (b) applicable transportation charges (if any), and (c) administrative costs. Gas charges are the product of a Participant's usage times the unit rate for gas for each month. The unit rate is the total monthly cost of natural gas purchased for all Participants at the weighted average cost of applicable supplier contracts' prices divided by the total monthly usage of Participants. Transportation and administrative charges will be allocated to each Participant based on gas usage.

12.2 Annual Report: Each year, ABAG POWER will provide each Participant with a report showing that Participant's total costs for natural gas, transportation services and administrative fees at a per therm cost for each category.

12.3 Gas Purchasing: Under policy direction of the Board, the Association of Bay Area Governments' (ABAG) staff will regularly canvas the natural gas market and enter into contracts to acquire natural gas for, among others, fixed price, indexed price and variable price with a minimum and/or maximum. ABAG staff, under policy direction of the Board, has the power to execute all contracts reasonably necessary to deliver natural gas to each Participant.

13. Change of Regulations: Any future change in law, rule or regulation, or PG&E practice which prohibits or frustrates ABAG POWER or the Public Agency from carrying out the terms of this Agreement

shall excuse both parties from their obligations, other than the obligation of Public Agency to make payments due for gas and services received.

14. Cancellation of Service:

14.1 Cancellation by Public Agency: Public Agency may cancel the Agreement by giving ABAG POWER written notice by June 1 of its intent to terminate on June 30 of the third year following the date notice was given.

14.2 Cancellation by ABAG POWER: Actions by the utilities and/or CPUC to develop rules which are in conflict with sound business practices, or impose unnecessary risk on either party to this Agreement, or substantially prevent ABAG POWER from performing its functions under this Agreement may result in the cancellation of this Agreement by ABAG POWER. ABAG POWER shall give Public Agency written notice ninety (90) days prior to such cancellation and both parties shall work diligently to minimize the negative effects on ABAG POWER and the Public Agency of such cancellation.

14.3 Working Capital Deposit: Within ninety (90) days after cancellation, ABAG POWER will pay to Public Agency the amount of its working capital as modified pursuant to Paragraph 10.3, less any debits imposed pursuant to Paragraph 10.1 and less any outstanding Actual Charges owed by Public Agency.

15. ABAG POWER Board of Directors: _____ (Name of Public Agency Representative) shall be the Public Agency's representative to the Board. The Board shall provide policy direction for the Program. The Board's powers shall include admission of new Participants and the extension of any contracts for the purchase of natural gas and/or related services under rules and procedures adopted by the Board.

16. Approvals: The Public Agency Representative may grant any approval, or give any direction required by this Agreement, in writing or orally. Written approvals or directions may be transmitted physically, by facsimile or electronically. Oral approvals will be confirmed in writing by either party.

17. Attorneys' Fees: In the event either party invokes its right to arbitration under Section H of Exhibit B due to an alleged breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as determined by the arbitrator.

18. Ownership of Files, Reports, Photographs, and Related Documents: Upon termination of the Agreement, any and all files, reports, photographs, plans, specifications, drawings, data, maps, models and related documents respecting in any way the subject matter of this Agreement, whether prepared by ABAG POWER, the Public Agency or third parties and in whatever media they are stored shall remain or shall become the property of the Public Agency and the Public Agency shall acquire title to, and copyright ownership of, all such documents. The Public Agency hereby grants to ABAG POWER an irrevocable license to retain a copy of all records covered by this section for ABAG POWER's files.

19. Indemnity: Public Agency shall indemnify and hold harmless ABAG and ABAG POWER and their respective directors, officers, member agencies, agents and employees from and against all claims, damages, losses and expenses including attorney's fees, arising out of or resulting from the performance or non-performance of the services required by this Agreement, unless such is caused by the negligence

of ABAG or ABAG POWER or their respective, directors, officers, member agencies, agents or employees.

20. Assignment/Security Arrangements: Public Agency hereby acknowledges that ABAG POWER may, in order to finance security deposit and cash flow deficits incurred in connection with the operation with this Program, incur short-term debt which may be secured by an assignment, encumbrance or hypothecation of this Agreement and/or payments due hereunder.

21. Notices: The following addresses for the giving of notices and billings shall be:

Public Agency Notices

Name: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

Email: _____

Attn.: _____

Public Agency Billing Address

Name: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

Email: _____

Attn.: _____

Public Agency Operational Notices

Name: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

Email: _____

ABAG POWER Notices

ABAG POWER
Attn: Ryan Jacoby
375 Beale Street, Suite 700
San Francisco, CA 94105
415-820-7956
rjacoby@bayareametro.gov

22. Severability: If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.

23. Captions: The captions appearing in this Agreement are inserted as a matter of convenience and in no way define or limit the provisions of this Agreement.

24. Other Contract Provisions: This Agreement shall be subject to the other standard provisions which are set forth in the attached Exhibit B.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date and year first above written.

ABAG PUBLICLY OWNED ENERGY RESOURCES

By: _____ Date: _____

Approved as to legal form and content:

By: _____ Date: _____

PUBLIC AGENCY

By: _____ Date: _____

Name: _____

Title: _____
(City Manager, County Administrator or other as designated by resolution)

Approved as to legal form and content:

By: _____ Date: _____

Name: _____

Title: _____

EXHIBIT A

List of Facility Accounts for ABAG POWER's Noncore Gas Program

Name of Public Agency: _____

	PG&E Account Number	Street Address	City
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Estimate Annual Usage

Account:

Service Address:

Estimated Usage (Dth/day)

Jan	_____	Jul	_____
Feb	_____	Aug	_____
Mar	_____	Sep	_____
Apr	_____	Oct	_____
May	_____	Nov	_____
Jun	_____	Dec	_____

Operating Profile:

Please note any specific operational characteristics that will cause gas usage to deviate from the above load estimate (e.g. weekly load profiles, scheduled maintenance outages, etc.).

EXHIBIT B
STANDARD CONTRACT PROVISIONS

- A. **Time of Essence.** Time is of the essence in this Agreement.
- B. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.
- C. **Controlling Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- D. **Binding on Successors.** This Agreement shall be binding upon the successors, assigns, or transferees of ABAG POWER or Public Agency as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this Agreement other than as provided above.
- E. **Records/Audit.** ABAG POWER shall keep complete and accurate books and records of all financial aspects of its relationship with Public Agency in accordance with generally-accepted accounting principles. ABAG POWER shall permit authorized representatives of Public Agency and/or any of Public Agency's governmental grantors to inspect, copy, and audit all data and records of ABAG POWER relating to its performance of services under this Agreement. ABAG POWER shall maintain all such data and records intact for a period of three (3) years after the date that services are completed hereunder or this Agreement is otherwise terminated.
- F. **Prohibited Interest.** ABAG or ABAG POWER or their respective directors, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
- G. **Insurance Requirements.**
- (1) ABAG shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following insurance:
- (a) Workers' compensation insurance as required by law.
 - (b) Comprehensive general liability insurance coverage of One Million Dollars (\$1,000,000) in the aggregate for products and/or completed operations and One Million Dollars (\$1,000,000) per occurrence for automobiles.
 - (c) Professional liability insurance with minimum liability limits of Two Million Dollars (\$2,000,000) in the aggregate.
- (2) All ABAG's insurance policies shall contain an endorsement providing that written notice shall be given to Public Agency at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies acceptable to Public Agency.
- (3) In addition, each policy or policies of insurance described in subparagraph (2) above shall contain an endorsement providing for inclusion of Public Agency and its directors, officers, agents, and

employees as additional insureds with respect to the work or operations in connection with this Agreement and providing that such insurance is primary insurance and that no insurance of Public Agency will be called upon to contribute to a loss.

(4) Promptly upon execution of this Agreement, ABAG shall deliver to Public Agency certificates of insurance evidencing the above insurance coverages. Such certificates shall make reference to all provisions or endorsements required herein and shall be signed on behalf of the insurer by an authorized representative thereof. ABAG agrees that at any time upon written request by Public Agency to make available copies of such policies certified by an authorized representative of the insured.

(5) The foregoing requirements as to types and limits of insurance coverage to be maintained by ABAG and approval of policies by Public Agency are not intended to, and shall not, in any manner limit or qualify the liabilities and obligations otherwise assumed by ABAG pursuant to this Agreement, including, but not limited to, liability assumed pursuant to ABAG's insurance policies under Subsections (1)(b) of this section.

(6) ABAG shall require all subcontractors to comply with the insurance requirements described in Section G(1)(a)-(c), inclusive.

H. **Arbitration.** Any dispute between ABAG POWER and the Public Agency regarding the interpretation, effects, alleged breach of powers and duties arising out of this Agreement shall be submitted to binding arbitration. The arbitrator shall be selected by agreement between the parties by lot from a list of up to six (6) arbitrators with each party submitting up to three (3) arbitrators.