



**ABAG POWER Executive Committee Meeting No. 2018-01
February 21, 2018 (11a.m - 1:00 p.m.)
Association of Bay Area Governments
375 Beale Street, Conference Room 7102 – Tamalpais (7th Floor)
San Francisco, CA 94105**

AGENDA*

- 1. Welcome and Introductions**
- 2. Public Comments**
- 3. Approve Summary Minutes of Executive Committee Meeting**
Action:
ATTACHMENT 3A – SUMMARY MINUTES OF DECEMBER 13, 2017
- 4. MTC Legal Waiver & Letter of Consent**
Information: Staff will provide a status update with regard to MTC providing legal representation to ABAG POWER.
- 5. ABAG – ABAG POWER MOU**
Action: Staff will provide a status update on the Memorandum of Understanding between ABAG and ABAG POWER. Committee may take action to approve MOU.
ATTACHMENT 5A – DRAFT MOU
ATTACHMENT 5B – MEMO FROM ABAG POWER CHAIR TO ABAG (3/20/17)
- 6. FY 2016-17 Audited Financial Statements**
Action: Staff will present for approval the audited financial statements for the fiscal year ending June 30, 2017. Staff will include a discussion of fiscal controls.
ATTACHMENT 6A – ABAG POWER BASIC FINANCIAL STATEMENTS
ATTACHMENT 6B – ABAG POWER MEMORANDUM OF INTERNAL CONTROL
- 7. Resolution 18-01 – Gas Purchasing Policy and Financial Security**
Action: Staff will review current gas purchasing policy, and present for approval a resolution acknowledging the policy and associated financial security.
ATTACHMENT 7A – ABAG POWER PURCHASING POLICY AND FINANCIAL SECURITY
MEMO
ATTACHMENT 7B – RESOLUTION No. 18-01
- 8. Report on Natural Gas Program**
Information/**Action:** Staff will review recent gas operations, including gas purchases; the program’s long-term hedge position; gas imbalances; regulatory updates; and other miscellaneous program items. Staff will also discuss potential modifications to the FY 2017-18 budget.
ATTACHMENT 8A – MONTHLY SUMMARY OF OPERATIONS FY 2017-18
ATTACHMENT 8B – GAS HEDGE CHART
ATTACHMENT 8C – MARKET PRICE CHART
ATTACHMENT 8D – REGULATORY & LEGAL EXPENSES-TO-DATE



**ABAG POWER Executive Committee Meeting No. 2018-01
February 21, 2018 (11a.m - 1:00 p.m.)
Association of Bay Area Governments
375 Beale Street, Conference Room 7102 – Tamalpais (7th Floor)
San Francisco, CA 94105**

AGENDA*

9. Natural Gas Purchasing Strategy and Program Recommendations

Information: Staff will provide a status update on the recommendations provided to improve the ability of ABAG POWER to meet its goals and provide on-going benefits to its members.

10. Other Business

11. Adjournment

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



APPROVAL OF SUMMARY MINUTES OF AUGUST 23, 2017 EXECUTIVE COMMITTEE MEETING

Motion was made by Schroeder/S/Walton/C/5:0:0 to approve as proposed the Summary Minutes of the August 23, 2017 Executive Committee meeting.

The aye votes were: Brees, Gilmore, Mersich, Schroeder, Walton.

The nay votes were: None.

Abstentions were: None.

Absentees were: Morton.

2018 ABAG POWER EXECUTIVE COMMITTEE MEETING SCHEDULE

Lahr noted the recent retirements of Julie Bueren and Mintze Cheng, and welcomed Misty Mersich to the ABAG POWER Executive Committee. He added a desire to recruit one or two additional members to the committee.

Motion was made by Schroeder/S/Walton/C/5:0:0 to approve as proposed the Calendar Year 2018 Executive Committee meeting schedule. Committee members were also provided contact information for program staff and key personnel.

The aye votes were: Brees, Gilmore, Mersich, Schroeder, Walton.

The nay votes were: None.

Abstentions were: None.

Absentees were: Morton.

MTC LEGAL WAIVER & LETTER OF CONSENT

Lahr reminded the Committee of the October 2017 appointment of the MTC's Office of General Counsel as POWER's Acting General Counsel, pursuant to Section 3.4 of the ABAG-MTC Contract for Services. Cindi Segal, MTC Deputy General Counsel, and Greg Rubens discussed the joint representation disclosure with regard to the Office of General Counsel's representation of both POWER and MTC. Rubens will act as independent outside counsel on a limited scope project to review the Legal Waiver & Letter of Consent and will provide a memorandum to the committee expressing any comments or potential concerns.

Motion was made by Schroeder/S/Brees/C/5:0:0 to authorize Gilmore to confer with outside legal counsel and to negotiate and execute the waiver with MTC if no concerns arise that merit discussion with the larger group.

The aye votes were: Brees, Gilmore, Mersich, Schroeder, Walton.



The nay votes were: None.

Abstentions were: None.

Absentees were: Morton.

ABAG-ABAG POWER MEMORANDUM OF UNDERSTANDING

Lahr informed members that the ABAG-ABAG POWER Memorandum of Understanding (MOU) had not yet been reviewed by the ABAG Executive Board. He stated the expectation that a status update would be provided at the February 21, 2018 POWER Executive Committee meeting.

REPORT ON NATURAL GAS PROGRAM

Monthly Summary of Operations FY 2017-18

Lahr provided members with the Monthly Summary of Operations reports for FY 2017-18; members were updated on the percentage savings comparisons with PG&E. Lahr noted that financial statements through October, 2017 indicated a cumulative savings figure of -16.7%.

Gas Hedge Chart

Lahr provided information on the various current long-term gas purchases (contracts which are greater than one month in length).

Market Price Chart

Lahr provided information on gas prices.

FY 2017-18 Year-to-Date Income Statement

Staff reviewed year-to-date revenues and expenses as of October 31, 2017.

Fiscal Year 2017-18 Budget-to-Actual Comparison

Staff reviewed the current year budget, gas program usage, and the weighted average cost of gas to-date. It was recommended and agreed upon that no changes were needed to be made to the budget at this time.

Regulatory Update

Lahr provided updates to two regulatory issues that have been discussed in prior meetings:

- 1) PG&E's Gas Transmission & Storage Rate Case: The California Public Utilities Commission recently issued a requirement that Core Transport Agents notify customers of the use of their confidential billing data. While this may apply and be implemented differently among public and private entities and the types of billing offered by those entities, it is possible the result will be ABAG POWER sending an acknowledgement notice to its members regarding the use of billing data.
- 2) Public Utilities Code - CTA Minimum standards: A proposed decision was recently released containing ambiguous language which may be interpreted as the PUC adopting minimum



standards for both private and public entities. Further clarification is needed; ABAG POWER has jointly filed comments requesting clarification.

FISCAL YEAR 2016-17 NATURAL GAS PROGRAM TRUE-UP

Staff and Executive Committee members reviewed the FY 2016-17 true-up calculation, resulting in \$0.85M returned to members throughout the remainder of FY 2017-18.

Staff noted that as a result of transitioning to MTC's financial system members with a monthly invoice resulting in a credit balance will receive monthly disbursements rather than an accrued disbursement at the end of the fiscal year.

NATURAL GAS PURCHASING STRATEGY AND POLICY RECOMMENDATIONS

Lahr presented survey results gathered from member input surrounding the October ABAG POWER annual Board meeting. Of the eighteen unique responses, feedback indicated a significant importance of cost savings as compared to PG&E, a willingness to identify existing customer accounts for possible transfer to the ABAG POWER program, and strong interest in renewable natural gas and energy saving assistance programs.

Lahr reminded the Committee of the program recommendations provided at the October 2017 Board of Directors meeting. No additional recommendations were presented; however, aiming to capitalize on comparatively low market prices, the committee discussed authorization of an additional gas purchase extending beyond June 2018. Staff agreed to investigate and resolve any potential policy differences of ABAG and MTC that may present difficulties regarding financial obligations extending beyond the current fiscal year.

ADJOURNMENT

Chair Gilmore adjourned the meeting at 1:05 PM.

*Example of a motion – [Member No. 1/S/Member No. 2/roll call vote/C/8:0:0] means Member No.1 motions, seconded by Member No.2, after roll call vote, motion carries, 8 = “yes” votes, 0 = “no” votes and 0 = abstention.

[REVISED]

MEMORANDUM OF UNDERSTANDING
between
ASSOCIATION OF BAY AREA GOVERNMENTS
and
ABAG PUBLICLY OWned ENERGY RESOURCES

This Memorandum of Understanding is entered into by and between the Association of Bay Area Governments (ABAG), a joint powers authority and ABAG Publicly OWned Energy Resources (POWER), a joint powers authority.

RECITALS

- A. Background. By resolution 97-19, the Executive Board of ABAG caused the formation of POWER in 1997 to provide energy services to public entities in the service territory of the Pacific Gas & Electric Company. Section 7(a) of the joint powers agreement (JPA) creating POWER appoints ABAG to implement the programs authorized by POWER. Generally, ABAG has done so through the use of ABAG staff and ABAG'S operating procedures and protocols. The POWER Bylaws provides that the POWER Board of Directors or Executive Committee appoint President, Chief Financial Officer and Secretary and those positions are currently filled by designated ABAG staff.
- B. ABAG – MTC Staff Consolidation. ABAG and the Metropolitan Transportation Commission (MTC), a regional planning agency created by state statute and the designated metropolitan planning organization/regional transportation planning agency for the San Francisco Bay area, decided to consolidate their respective staffs (Consolidated Staff) under the terms of a Contract for Services dated May 30, 2017 (CS), between ABAG and MTC which is attached hereto as Appendix A. The CS recognizes that ABAG remains as an independent legal entity with its own assets, liabilities, revenues and expenses.
- C. Contract for Services and POWER. The CS identifies and describes Local Collaboration Programs (LCPs) carried out by ABAG, including ABAG POWER. ~~Current~~ ABAG employees who ~~perform~~performed work to implement and support POWER programs ~~will be offered positions on~~are now members of the ~~consolidated staff~~Consolidated Staff. Further, the CS includes provisions that, on their face, appear to commit the LCPs to specific courses of action or to affect how ABAG provides services to the LCPs. None of the LCPs, including POWER, is a signatory to, or a third party beneficiary of, the CS.

STATEMENT OF UNDERSTANDING

1. ~~ABAG and POWER acknowledge that POWER is not a party to the CS. ABAG and POWER acknowledge~~acknowledges that none of the terms of the CS are binding on POWER but that the inclusion of POWER in ABAG's budget and work plan (B&WP) for FY 2017-18, attached hereto as Appendix B, obligates MTC to provide services to POWER and obligates ABAG to pay for such services in FY 2017 -18 and a B&WP that includes POWER will be prepared for subsequent fiscal years. The parties will use the processes described in this MOU to ensure the satisfactory performance of services for POWER and timely payment for the same in FY 2017-18 and in subsequent fiscal years.
2. ABAG proposes to meet its obligations described in section A through services and functions provided to ABAG, and through ABAG to POWER, under the CS. POWER acknowledges this arrangement, accepts it as meeting the terms of the JPA and agrees to fund the portion of the POWER budget in the applicable approved B&WP.
3. Through the Consolidated Staff, ABAG will work with all the LCPs, including POWER to develop a schedule for the preparation of the B&WP for each fiscal year that coordinates with the schedules for each of the LCPs to develop their complete budget for that fiscal year.
4. ABAG and POWER acknowledge that ABAG serves as POWER's fiscal agent, including holding and managing POWER's assets of which the primary component is POWER's operating capital in the approximate amount of ~~_____~~ Two Million Seven Hundred Eighty Five Dollars (~~\$(_____)~~ (\$2,000,785) as of June 30, 2017.
 - (a) Under section 3.3 of the CS, ABAG ~~will assign~~assigned this function to the Consolidated Staff effective July 1, 2017.
 - (b) This ~~will~~did not change the fact that POWER's assets and liabilities remain POWER's.
 - (c) POWER has worked, and will continue to work with the Consolidated Staff to ~~take~~take steps necessary to implement section 3.3, including authority to open accounts on behalf of POWER, as needed and to invest funds in accordance with an adopted investment policy.
 - (d) Provisions in the CS that allow the LCPs, including POWER, to use LCP assets to provide financial support to ABAG and/or its programs, do not affect in any way POWER's authority over its assets and revenues. Any such support requires the consent of POWER and authorization by its Board of Directors or Executive Committee.
 - (e) Through the Consolidated Staff, ABAG will consult with POWER to determine the type, detail and timing of financial reports to POWER in carrying out the fiscal agent functions. These reports will be provided to POWER through ABAG's Finance and Personnel Committee.
5. Section 3.3 of the CS also provides that the Consolidated Staff will use MTC's rules for business operations in implementing the services to the extent they are compatible with

ABAG policies. ABAG anticipates that some of MTC's standard business practices may differ from ABAG's. Where such differences have the potential to impact POWER, they will be identified in due course and POWER will be consulted to determine the best solution to accommodating POWER's programmatic needs. A preliminary list of such business practices is set forth in Appendix C. Based on such consultation, ABAG will consult with MTC to identify a procedure that meets POWER's programmatic and policy needs and is compatible with MTC's business practices.

6. The CS provides for creation of the position of Deputy Executive Director for Local Government Services and that the person occupying that position will be the primary liaison between POWER and MTC and the consolidated staff. ABAG and MTC have agreed that ~~ABAG's Acting Executive Director,~~ Brad Paul ~~will be~~ has been appointed to that position.
7. The former ABAG staff members who currently implement and support POWER's programs (Jerry Lahr and Ryan Jacoby) ~~will be offered positions in the consolidated staff~~ are members of the Consolidated Staff.
 - (a) ~~If they accept the offers,~~ ABAG expects that they will continue to perform those functions and will take steps to ensure that this occurs.
 - ~~(b) If any decline the offer, ABAG will take the steps described in section 8.~~
 - ~~(b) In either event,~~
 - (c) POWER will exercise its power of appointment of its officers to ensure efficiency and effectiveness in its use of the Consolidated Staff. ABAG's preference in this regard are:
 - (i) Brad Paul, Deputy Executive Director of MTC for Local Government Services as President;
 - (ii) Brain Mayhew, Chief Financial Officer of MTC, or his designee, as Chief Financial Officer and
 - (iii) Jerry Lahr ~~(title to be determined and pending his acceptance of a position as a member of the Consolidated Staff),~~ Assistant Director of MTC for Energy Programs as Secretary.
8. Upon receipt of notice from MTC that any of the persons described in sections 6 and 7, or any of their successors, is leaving the position ascribed to him/her, ABAG will consult with POWER regarding the process, timing and criteria for filling the position and will work with MTC to ensure that ABAG's and POWER's concerns and expectations are met.
9. Section 3.4 of the CS states that the MTC Legal Department will provide general legal support services to the Consolidated Staff in their implementation of the B&WP for ABAG and the LCPs, including POWER. The Consolidated Staff will work with POWER to retain specialized legal services for POWER to be provided at POWER's expense.
10. ABAG and POWER acknowledge that section 9 of the CS provides for MTC to conduct a governance study of all LCPs, including POWER. This study will be conducted at no cost to POWER. Further, neither POWER or ABAG will ~~not~~ be bound by the recommendations or results of the study and will retain all authority regarding its governance structure.

11. ABAG and POWER acknowledge that section 9 of the CS provides for the ABAG, MTC and the LCPs, including POWER, to mutually indemnify and hold each other harmless and to release claims arising out of the CS. ~~ABAG and POWER acknowledge that section 9 does not bind POWER.~~ The Consolidated Staff will carry out the requirements of section 11 of the CS regarding insurance and risk allocation and present the results of that process that includes a strategy for insurance and risk allocation that covers POWER. ABAG expects that this strategy will induce POWER to forego any of POWER's claims against ABAG or MTC described in section 9 of the CS.
12. Pursuant to section 3.5 of the CS, ABAG will receive quarterly progress reports from MTC regarding the services provided by the Consolidated Staff under the CS, including services to POWER. ABAG will forward such reports to POWER.
13. Pursuant to section 2.4 of the CS, ABAG will provide written reports to the ~~Commission governing board~~ of MTC regarding the quality and manner in which services, programs and work products are delivered, observations on the potential reasons for any deficiencies and suggestions for improvements. The ~~Commission governing board of MTC~~ is required to respond within 60 days. ABAG will consult with each LCP, including POWER, regarding service delivery to each LCP and include their opinions of same in its report to the ~~Commission governing board of MTC~~. ABAG will share with each LCP, including POWER, the ~~Commission's governing board of MTC's~~ response.
14. Section 14 of the CS provides a process for the resolution of disputes arising out of the CS. ABAG and POWER acknowledge that the processes described in sections 12 and 13 of this MOU and the referenced section of the CS are designed to identify and remedy any shortcomings in services provided to ABAG or the LCPs. If POWER has noted such a shortcoming and ABAG has transmitted the concerns to the governing board of MTC and the ~~Commission's governing board of MTC's~~ response described in section 13 of this MOU is not satisfactory to POWER, ABAG will submit POWER's concerns through the dispute resolution process in section 14 of the CS.
15. Section 15 of the CS provides a process for termination of the CS. ABAG will consult with all the LCPs, including POWER, prior to terminating the CS or immediately upon receiving notice of an actual or potential termination of the CS. ABAG and POWER will use their best efforts to reach agreement on a mutually acceptable course of action. ABAG acknowledges that under the section 7(a) of the JPA POWER has the right to remove ABAG as the administering Member for POWER and that POWER may exercise that right due to termination of the CS or concerns regarding services provided under the CS, or for POWER's convenience.
16. All notices or other communications to the parties shall be made in writing which may include electronic communications such as email or digital documents attached to such

email. The physical and email addresses for parties are set forth in Appendix D which may be revised from time to time without amending this MOU.

17. This MOU may be modified in writing executed by both parties.

18. This MOU may be terminated effective July 1 of any year upon written notice by either party submitted on or before January 1 of the year the termination is effective.

~~17-19.~~ This MOU may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be effective with the approval of their legally authorized representatives on the dates indicated below.

Association of Bay Area Governments

Date: _____

Title

~~Brad Paul, Acting Executive Director~~Name,

ABAG Publicly OWned Energy Resources

Date: _____

~~Julia R. Bueren, Board Chair~~Name, Title

APPENDIX C

POWER Business Practices
For
Discussion with Consolidated Staff/MTC

1. POWER program manager has authority to enter into natural gas purchase contracts in amounts that are not bounded and for durations up to three (3) years. Any limitations or controls on such authority must allow for decisions to occur in a timely manner that includes, but are not limited to, immediate purchases to meet load requirements, response to changing market conditions and time limited offers. To the extent that any limitations or controls are based on potential financial risks, they will be evaluated in light of (a) the risk being limited to POWER and its assets and (b) the risk being exercised by the Consolidated Staff on behalf of POWER.
2. POWER performs an annual 'true up' of amount paid by POWER members in a given fiscal year and the actual costs of the natural gas and services provided. Any changes to the process for performing this function will first be presented to POWER for its approval.

APPENDIX D

1. Notices or other communications to ABAG for any matter other than those covered by section 12 – 14 of the MOU shall be sent to:

Brad Paul, Deputy Executive Director for Local Government Services
Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA94105
Email: BradP@abag.ca.gov

2. Notices or other communications to ABAG for matters covered by section 12 – 14 of the MOU shall be sent to:

Julie Pierce, President
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA94105
Email: JPierce@ci.clayton.ca.us

3. Notices or other communications to POWER shall be sent to:

~~Julie R. Bueren, Public Works Director~~
~~County of Contra Costa~~
~~255 Glacier Drive~~
~~Martinez, CA 94553~~
~~Email: julie.bueren@pw.cccounty.us~~ Tonya Gilmore
City of Orinda
22 Orinda Way
Orinda, CA 94563
Email: tgilmore@cityoforinda.org

ASSOCIATION OF BAY AREA GOVERNMENTS
Representing City and County Governments of the San Francisco Bay Area



DATE: March 20, 2017

TO: Brad Paul, ABAG Acting Executive Director
Kenneth Moy, ABAG Legal Counsel
Courtney Ruby, ABAG Finance Director

CC: ABAG POWER Executive Committee

FROM: Julia Bueren, ABAG POWER Chair

RE: ABAG/MTC Draft Contract for Services

ABAG POWER provides these comments on the Draft Contract for Services for MTC/ABAG Consolidation (CS).

Background

ABAG POWER was established as a Joint Powers Authority (JPA) in 1998 as a collaboration among many Bay Area cities and counties, with the objective of providing leadership for local governments in the areas of energy procurement and energy management. Initially ABAG POWER included both an electric aggregation program and a natural gas aggregation program, however the electric aggregation program was suspended due to events resulting in California's energy crisis of 2001. The natural gas program was also affected by the crisis, but to a lesser degree and was able to ride through this stormy period. Now, after 20 years of operation, the natural gas program remains active, serving nearly forty member agencies throughout PG&E service territory.

ABAG POWER currently contracts with ABAG to provide administrative and operational services, however, as a JPA, ABAG POWER's governance is separate and distinct from ABAG.

Contract for Services

In general terms, the CS contemplates that in the near future all ABAG staff will become MTC staff with similar duties and responsibilities, and MTC agrees to maintain the same level of service to all of the Local Collaboration Programs (LCPs), of which ABAG POWER is one.

While ABAG POWER appreciates the stated intent of the CS to "preserve, serve and secure the respective goals and missions of the LCPs," we nevertheless have a few concerns related to the CS, and the potential for increased costs. These concerns are summarized below:

1. It is our understanding that it is not contemplated that ABAG POWER will become a party to the CS. With that intent in mind, ABAG POWER has not reviewed the CS from the view point of being a party to the agreement, and it should be noted that the CS cannot bind ABAG POWER to the provisions of the CS without ABAG POWER's explicit agreement. We would point to the following examples of areas where the CS appears to require agreement from ABAG POWER:



- Section 4.2: “The ABAG Executive Board and the LCP governing bodies will collaborate and agree on the annual work plans and budgets...”
- Section 5.1: “Compensation structures may include, subject to budget discussions between MTC and ABAG: ... (e) **subsidy of programs by one or more LCP**” [Emphasis added.]
- Section 9: “ABAG, the LCPs, and MTC mutually agree to indemnify and hold each other harmless...”
- Section 10.1: “MTC and ABAG will jointly engage a professional risk manager and an insurance broker (...) to develop a proposed allocation of legal risk (...) between and among MTC, ABAG and the LCPs during the term of the Agreement.”
- Section 10.2(a): “ABAG, the LCPs, and MTC will be insured under one blanket comprehensive general liability policy,...”

All of these sections represent terms that would require the approval of ABAG POWER’s governing body.

2. In two instances the CS requires advance written notice of specific actions:

- Section 6.2: Changes in Employee Status. Requires 30 days notice prior to changes to any Transitioned Employee.
- Section 14.1: Termination for Cause. Requires 30 days notice prior to termination of the Agreement.

In either of these cases, 30 days notice would likely be insufficient time for ABAG POWER to make alternate arrangements, particularly in cases where program management services were interrupted. Also, while these sections require notice to the ABAG Executive Board, they do not require notice to the affected LCP.

3. In a February 13th memo transmitting the draft CS to ABAG and MTC, the agencies’ Executive Directors made the following statement:

ABAG and the LCPs currently have revenues from multiple sources. Some of the revenues, mainly grants and subventions, may only be used for specific programs and products. The balance, largely ABAG’s membership dues **and reserves held by ABAG and the LCPs, are discretionary**. [Emphasis added.] We anticipate that development of future budgets and work plans will continue to draw on both types of revenues, including grants and subventions to ABAG and/or LCPs.

It is important for ABAG and MTC to understand that all revenues and reserves generated by ABAG POWER, are held solely for the use of ABAG POWER. ABAG POWER must feel comfortable that these funds will not be used for other purposes within ABAG or MTC.

4. Additionally, the February 13th memo states that “the services provided by the consolidated staff will cost more than those provided by the current ABAG staff.” While it is our understanding that the particular factors related to the cost increase are still being determined, we would ask that



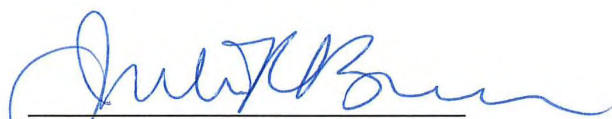
ABAG/MTC management clearly indicate the source and magnitude of the increase in sufficient time such that ABAG POWER can make informed decisions as it moves forward with program planning and budgeting for FY 2017-18.

Conclusion

ABAG POWER appreciates the services provided by ABAG over the years, and hopes that the end result of the staff consolidation between ABAG and MTC will allow for a continuation of those services.

Please contact Jerry Lahr, ABAG POWER Program Manager, (415-820-7908/ JerryL@abag.ca.gov) if you have any questions regarding these comments.

Sincerely,



Julia Bueren
ABAG POWER Chair

**ABAG
PUBLICLY OWNED ENERGY
RESOURCES

BASIC FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2017**

This Page Left Intentionally Blank

**ABAG
PUBLICLY OWNED ENERGY RESOURCES
BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017**

Table of Contents

	<u>Page</u>
Independent Auditor's Report	1
Management's Discussion and Analysis	3
Basic Financial Statements:	
Statement of Net Position.....	6
Statement of Activities	7
Statement of Cash Flows	8
Notes to Financial Statements	9

This Page Left Intentionally Blank



INDEPENDENT AUDITOR'S REPORT

To the Honorable Members of the Executive Committee
ABAG Publicly Owned Energy Resources
San Francisco, California

We have audited the accompanying financial statements of the business-type activities of ABAG Publicly Owned Energy Resources (POWER), California, as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise POWER's basic financial statements as listed in the Table of Contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to POWER's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of POWER's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities of POWER as of June 30, 2017, and the respective change in financial position and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Maze & Associates

Pleasant Hill, California
December 8, 2017

MANAGEMENT'S DISCUSSION AND ANALYSIS

ABAG Publicly Owned Energy Resources (POWER) has prepared its financial report for the fiscal year ending June 30, 2017, based on the provisions of the Government Accounting Standards Board Statement 34, "Basic Financial Statement and Management's Discussion & Analysis—for State and Local Governments," (GASB 34). The following discussion and analysis provides an overview of POWER's financial activities in the fiscal year, and it should be read in conjunction with the accompanying financial statements.

BASIC FINANCIAL STATEMENTS

The Basic Financial Statements required under GASB 34 include:

- (1) Statement of Net Position - provides information about the financial position of POWER, including assets, liabilities and net position. The difference between this statement and the traditional Balance Sheet is that net position (fund equity) is shown as the difference between total assets and total liabilities.
- (2) Statement of Activities - presents revenues, expenses and changes in net position for the fiscal year. It differs with the traditional Statement of Revenues and Expenses in that revenues and expenses directly attributable to operating programs are presented separately from investment income and financing costs.
- (3) Statement of Cash Flows - provides itemized categories of cash flows. This statement differs from the traditional Statement of Cash Flows in that it presents itemized categories of cash in-flows and out-flows, instead of computing the net cash flows from operation by backing out non-cash revenues and expenses from net operating income. In addition, cash flows related to investments and financing activities are presented separately.

The Basic Financial Statements described above provide information about the financial activities of POWER's Natural Gas program. They do not included information related to other ABAG supported energy activities, performed under the POWER management umbrella.

FISCAL YEAR 2017 FINANCIAL HIGHLIGHTS

Financial highlights of the year include the following:

- Total assets were \$3.2 million at June 30, 2017 a decrease of \$684,000 from the June 30, 2016 balance. The major factor in the decrease in assets was a \$787,000 decrease in cash, which parallels a decrease in unearned revenue of \$776,000. Because we attempt to match billings to members with the cost of gas provided, the decrease in unearned revenue is a positive action.
- Total revenues were \$7.1 million in fiscal year 2017, compared to \$5.7 million in fiscal year 2016. The increase in revenue is a result of higher unit cost of natural gas purchases. Revenues include earnings on cash held in LAIF and banks of \$21,102 in fiscal year 2017 and \$14,664 in fiscal year 2016.

- The net position remained at zero at June 30, 2017. POWER's financial reporting model reflects all surpluses and deficits as liabilities to or receivables from members.
- General and administrative expenses for fiscal year 2017 were \$336 thousand, a decrease of \$23 thousand from the prior year. This decrease is due to lower administrative expense payments to ABAG.

MAJOR PROGRAM INITIATIVES IN FISCAL YEAR 2017

Natural Gas Pool

Currently the natural gas aggregation program has 38 member cities, counties and special districts located in Northern California. As of June 30, 2017, the pool was serving a total of 758 core accounts and three non-core accounts. For fiscal year 2017, leveled natural gas billings totaled \$8.0 million, while total expenses were \$7.1 million. The excess of revenues over expenses in the amount of roughly \$859,000 was recorded as unearned revenues and will be returned to members as true-up adjustments in billings during fiscal year 2018. Total gas usage of the program was approximately 7.0 million therms during fiscal year 2017, an increase of approximately 150,000 therms over usage in fiscal year 2016.

Continuing with POWER's revised strategy for purchasing natural gas, about 24% of purchases during fiscal year 2017 were with fixed-price contracts of greater than one month in length. The remainder of the program's gas requirements was filled with monthly and daily index-based purchases. This combination of purchases produced an end-of-year weighted average price that was approximately 3.3% higher than PG&E's similar rate schedule (GNR-1).

PROGRAM OUTLOOK FOR FISCAL YEAR 2018

Futures contracts show that gas prices are expected to remain in the \$3.00 - \$3.50/Dth range for the next couple of years, even with an expectation of a colder than normal winter. This reflects a situation where gas supply is expected to remain ahead of demand.

However, there are many factors that can cause significant gas price volatility, including: abnormal weather patterns, increased demand from industry and/or gas powered electric generators, restrictions in gas transportation capacity and/or imports, the price of oil, regulatory actions, political instability, and the rise of gas exports. In addition, an increased focus on environmental issues has initiated regulatory actions that emphasize the use of electricity over natural gas thus lowering the demand for gas appliances, and thus moderating gas costs. Conversely, regulatory actions also have the potential to increase costs for using petroleum products, including natural gas. Ultimately, the business objective of ABAG POWER is to offer a reliable energy source at stable prices. The program is deemed to be even more valued during periods of uncertainty.

In July 2017 ABAG staff was consolidated into the Metropolitan Transportation Commission (MTC), and the ABAG POWER Board subsequently took action to appoint MTC staff to the relevant ABAG POWER officer positions in accordance with the Bylaws. MTC staff will continue to provide administrative support to ABAG POWER in accordance with the ABAG-MTC Contract for Services.

CONTACTING POWER'S FINANCIAL MANAGEMENT

This Financial Report is intended to provide citizens, taxpayers, investors, and creditors with a general overview of POWER's finances. Questions about this Report should be directed to the ABAG POWER Corporation 375 Beale Street, Suite 700, San Francisco, CA 94105.

ABAG
PUBLICLY OWNED ENERGY RESOURCES
STATEMENT OF NET POSITION
JUNE 30, 2017

	Natural Gas Pool
ASSETS	
Cash and Cash Equivalents (Note 2)	\$2,850,549
Receivable from Members and Others	251,504
Interest Receivable	5,825
Natural Gas Inventory (Note 1E)	69,384
Total Assets	3,177,262
 LIABILITIES	
Accounts Payable	317,753
Payable to Members	2,000,785
Unearned Revenue	858,724
Total Liabilities	3,177,262
NET POSITION	

See accompanying notes to basic financial statements

ABAG
PUBLICLY OWNED ENERGY RESOURCES
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2017

	Natural Gas Pool
OPERATING REVENUES	
Sale of Natural Gas	\$7,113,416
OPERATING EXPENSES	
Cost of Natural Gas Sold	6,798,891
Gross Margin	314,525
GENERAL AND ADMINISTRATIVE EXPENSES	
Metering and Billing Agent Fees	15,841
Management and Administration (Note 1A)	319,786
Total General and Administrative Expenses	335,627
OPERATING LOSS	(21,102)
NONOPERATING INCOME	
Interest Income	21,102
CHANGE IN NET POSITION	
BEGINNING NET POSITION	
ENDING NET POSITION	

See accompanying notes to basic financial statements

ABAG
PUBLICLY OWNED ENERGY RESOURCES
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED JUNE 30, 2017

	<u>Natural Gas Pool</u>
CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from members	\$6,208,679
Payments to suppliers	(6,679,208)
Payments for management and administration	(319,786)
Payments for agent and legal fees	<u>(15,841)</u>
Cash Flows (used by) Operating Activities	<u>(806,156)</u>
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest collections	<u>19,423</u>
Cash Flows from Investing Activities	<u>19,423</u>
Net decrease in cash and cash equivalents	(786,733)
Cash and cash equivalents at beginning of period	<u>3,637,282</u>
Cash and cash equivalents at end of period	<u><u>\$2,850,549</u></u>
Reconciliation of Operating Income (Loss) to Cash Flows from Operating Activities:	
Operating Loss	(\$21,102)
Change in assets and liabilities:	
Receivables	(128,778)
Natural gas inventory	27,718
Accounts payable	91,965
Unearned revenue	<u>(775,959)</u>
Cash Flows from (used by) Operating Activities	<u><u>(\$806,156)</u></u>

See accompanying notes to basic financial statements

ABAG
PUBLICLY OWNED ENERGY RESOURCES
NOTES TO BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Description

ABAG Publicly Owned Energy Resources (POWER) is a joint powers agency of local government entities in Northern California. POWER is governed by a Board of Directors composed of representatives from member jurisdictions. The Board appoints an Executive Committee to carry out policy decisions.

POWER is an “Energy Service Provider (ESP),” aggregating the natural gas requirements of its members as allowed by the California Public Utilities Commission, and purchasing gas directly from natural gas producers that offer competitive prices and reliable supply. POWER arranges for the transportation and delivery of natural gas to its members by pipelines from its source. POWER pays these vendors and bills its members for their usage, transportation and administration costs on a monthly basis.

The area served by POWER is encompassed by Pacific Gas & Electric Company (PG&E), which delivers gas to POWER’s members.

POWER has contracted with a number of vendors for natural gas purchases. As required by the utility companies, the amount of gas POWER purchases each month must be nominated to PG&E’s distribution system in advance, and POWER is obligated to purchase the amount nominated, regardless of actual usage. The difference between the amount of gas nominated and the amount actually used results in an “imbalance,” which may be cured by making purchases or sales on the open market or allocation to a future month’s use.

POWER has contracted separately with the Association of Bay Area Governments (ABAG), to act as POWER’s trustee, providing promotional, administrative, accounting and clerical support. POWER paid ABAG \$310,670 for these services, and \$9,116 for contract services, in the fiscal year ended June 30, 2017.

The members of POWER must be voting members or cooperating members of ABAG at the time they join POWER, but not all ABAG members are members of POWER. For that reason, POWER is not a component unit of ABAG.

B. Basis of Presentation

POWER’s Basic Financial Statements are prepared in conformity with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board is the acknowledged standard setting body for establishing accounting and financial reporting standards followed by governmental entities in the United States of America.

ABAG
PUBLICLY OWNED ENERGY RESOURCES
NOTES TO BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

C. Basis of Accounting

POWER accounts for all transactions in a single enterprise fund, which is a separate set of self-balancing accounts that comprise assets, deferred outflows of resources, liabilities, deferred inflows of resources, net position, revenues and expenses. All transactions are accounted for on the accrual basis, which means that expenses are recorded when the liability is incurred and revenues are recorded when earned, rather than when cash changes hands.

Revenues from sales of natural gas are recognized in the period in which the gas is delivered to members. Members are billed monthly on a levelized basis based on anticipated average usage.

Any excess of billings to members over total actual cost of a fiscal year is reflected as unearned revenue and will be reflected as true-up adjustments in billings in the following fiscal year.

D. Estimates

POWER's management has made a number of estimates and assumptions relating to the reporting of assets, deferred outflows/inflows of resources and liabilities and revenues and expenses and the disclosure of contingent liabilities to prepare these financial statements in conformity with Generally Accepted Accounting Principles (GAAP). Actual results could differ from those estimates.

E. Natural Gas Inventory

Temporary inventories of natural gas are stated at cost, and transfers to the cost of natural gas sold are accounted for on a weighted average cost basis.

F. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. POWER categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels based on the extent to which inputs used in measuring fair value are observable in the market.

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 inputs are inputs – other than quoted prices included within level 1 – that are observable for an asset or liability, either directly or indirectly.

Level 3 inputs are unobservable inputs for an asset or liability.

If the fair value of an asset or liability is measured using inputs from more than one level of the fair value hierarchy, the measurement is considered to be based on the lowest priority level input that is significant to the entire measurement.

ABAG
PUBLICLY OWNED ENERGY RESOURCES
NOTES TO BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 2 – CASH AND CASH EQUIVALENTS

A. Carrying Amount and Fair Value

Cash and investments comprised the following at June 30, 2017:

	Fair Value
Local Agency Investment Fund (LAIF)	\$2,529,643
Cash in Banks	320,906
Total Cash and Cash Equivalents	\$2,850,549

B. Interest Rate Risk

Interest rate risk is the potential adverse effect resulting from changes in market interest rates on the fair value of an investment. Generally, the longer the maturity of an investment, the greater is the sensitivity of its fair value to changes in market interest rates. As of year-end, the weighted average maturity of the investments in the LAIF investment pool is approximately 194 days.

C. Credit Risk

Credit risk is the risk of failure of an issuer of an investment in fulfilling its obligation to the holder of the investment. LAIF is not rated by a nationally recognized statistical rating organization.

D. Fair Value Hierarchy

The Local Agency Investment Fund is classified as Exempt, and is valued based on the fair value factor provided by the Treasurer of the State of California, which is calculated as the fair value divided by the amortized cost of the investment pool.

E. Custodial Credit Risk

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, POWER may not be able to recover its deposits. Under California Government Code Section 53651, depending on specific types of eligible securities, a bank must deposit eligible securities posted as collateral with its agent having a fair value of 110% to 150% of a public agency's deposit. All of POWER's deposits are either insured by the Federal Depository Insurance Corporation (FDIC) or collateralized with pledged securities held in the trust department of the financial institutions in POWER's name.

**ABAG
PUBLICLY OWNED ENERGY RESOURCES
NOTES TO BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017**

NOTE 2 – CASH AND CASH EQUIVALENTS (Continued)

F. Local Agency Investment Fund

POWER is a participant in the Local Agency Investment Fund (LAIF). LAIF is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. Included in LAIF's investment portfolio are collateralized mortgage obligations, mortgage-backed securities, other asset-backed securities, loans to certain state funds, and floating rate securities issued by federal agencies, government-sponsored enterprises, and corporations. The carrying value of LAIF approximates fair value.

G. Statement of Cash Flows

For purposes of the statement of cash flows, POWER considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

NOTE 3 – PURCHASE COMMITMENTS

During the fiscal year, POWER entered into various agreements with energy companies to facilitate the sale and purchase of gas for a particular delivery period. These agreements constituted commitments of \$701,963 as of June 30, 2017.

NOTE 4 – COMMITMENTS AND CONTINGENT LIABILITIES

On July 1, 2017, certain members of the ABAG staff, including all members providing services to POWER, were merged into the staff of the Metropolitan Transportation Commission (MTC) and the responsibility for services performed for the Authority by ABAG staff became the responsibility of MTC management and staff. The POWER Board of Directors continues to serve as the governing body for POWER.

POWER is subject to litigation arising in the normal course of business. In the opinion of POWER's legal counsel there is no pending litigation which is likely to have a material adverse effect on the financial position of POWER.

**ABAG PUBLICLY OWNED ENERGY RESOURCES
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS

FOR THE YEAR ENDED
JUNE 30, 2017**

This Page Left Intentionally Blank

**ABAG PUBLICLY OWNED ENERGY RESOURCES
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

For the Year Ended June 30, 2017

Table of Contents

	<u>Page</u>
<i>Memorandum on Internal Control</i>	1
<i>Required Communications</i>	3
Significant Audit Findings	3
Accounting Policies	3
Unusual Transactions, Controversial or Emerging Areas	3
Accounting Estimates	4
Disclosures	4
Difficulties Encountered in Performing the Audit	4
Corrected and Uncorrected Misstatements	4
Disagreements with Management	4
Management Representations	4
Management Consultations with Other Independent Accountants	5
Other Audit Findings and Issues	5
Other Audit Findings Accompanying the Financial Statements	5

This Page Left Intentionally Blank



MEMORANDUM ON INTERNAL CONTROL

To the Executive Committee
ABAG Publicly Owned Energy Resources
San Francisco, California

In planning and performing our audit of the basic financial statements of the ABAG Publicly Owned Energy Resources (POWER) as of and for the year ended June 30, 2017, in accordance with auditing standards generally accepted in the United States of America, we considered POWER's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of POWER's internal control. Accordingly, we do not express an opinion on the effectiveness of POWER's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of POWER's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, Executive Committee, and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Maze & Associates

Pleasant Hill, California
December 8, 2017

This Page Left Intentionally Blank



REQUIRED COMMUNICATIONS

To the Executive Committee
ABAG Publicly Owned Energy Resources
San Francisco, California

We have audited the basic financial statements of the ABAG Publicly Owned Energy Resources (POWER) for the year ended June 30, 2017. Professional standards require that we communicate to you the following information related to our audit under generally accepted auditing standards.

Significant Audit Findings

Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by POWER are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year.

The following Governmental Accounting Standards Board (GASB) pronouncements became effective and did not have a material effect on the financial statements:

- GASB 73 - *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*
- GASB 74 – *Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans*
- GASB 77 - *Tax Abatement Disclosures*
- GASB 80 – *Blending Requirements for Certain Component Units—an amendment of GASB Statement No. 14*
- GASB 82 – *Pension Issues—an amendment of GASB Statements No. 67, No. 68, and No. 73*

Unusual Transactions, Controversial or Emerging Areas

We noted no transactions entered into by POWER during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting POWER's financial statements was:

Estimated Fair Value of Investments: As of June 30, 2017, POWER held approximately \$2.5 million of investments as measured by fair value as disclosed in Note 2 to the financial statements. Fair value is essentially market pricing in effect as of June 30, 2017. These fair values are not required to be adjusted for changes in general market conditions occurring subsequent to June 30, 2017.

Disclosures

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. We did not propose any audit adjustments that, in our judgment, could have a significant effect, either individually or in the aggregate, on POWER's financial reporting process.

Professional standards require us to accumulate all known and likely uncorrected misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the Executive Committee.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in a management representation letter dated December 8, 2017.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to POWER’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as POWER’s auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Information Accompanying the Financial Statements

We applied certain limited procedures to the required supplementary information that accompanies and supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the required supplementary information and do not express an opinion or provide any assurance on the required supplementary information.

This information is intended solely for the use of the Executive Committee and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Maze & Associates

Pleasant Hill, California
December 8, 2017

This Page Left Intentionally Blank

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



DATE: February 21, 2018

TO: ABAG POWER Executive Committee

FROM: Brian Mayhew, Chief Financial Officer
Brad Paul, Deputy Executive Director, Local Government Services
Jerry Lahr, ABAG POWER Manager

RE: ABAG POWER Natural Gas Purchasing Policy and Financial Security

As part of the recent staff consolidation of ABAG and MTC, and in accordance with the ABAG-MTC Contract for Services, MTC has been reviewing the various policies and procedures applicable to the Local Collaboration Programs. Included in this, has been a review of ABAG POWER's financial security, and how its gas purchasing policies coordinate with MTC's procurement policies and financial accountability. This memo highlights some of the findings and recommends the Executive Committee pass a resolution recognizing these interpretations.

Background. The ABAG POWER Joint Powers Agreement currently designates the Association of Bay Area Governments (ABAG) as the Administering Member of ABAG POWER.¹ On July 1, 2017 ABAG and the Metropolitan Transportation Commission (MTC) consolidated their staffs under MTC. As part of this consolidation, ABAG and MTC entered into a Contract for Services, dated May 30, 2017 (CS), which detailed how MTC would continue to provide staffing and services for ABAG's various Local Collaboration Programs (LCPs), including ABAG POWER. The CS includes the provision that the MTC rules for administration, purchasing, contracting and other business operations shall apply to the LCP services, to the extent they are compatible with ABAG policies.

The Natural Gas Aggregation program is a program approved by the ABAG POWER Board for members that choose to participate. The Natural Gas Program participants are governed by three documents: (1) *ABAG POWER Joint Powers Agreement*, (2) *ABAG POWER Bylaws*, and (3) *Natural Gas Sales and Aggregation Agreement (NGSAA)*².

ABAG POWER's general gas purchasing policy allows for entering into contracts for gas delivery up to three years into the future. The specific gas purchasing strategy is set by the ABAG POWER Board and/or Executive Committee, but always maintains a maximum contract length of no more than three years.

The above referenced governing documents were reviewed to ensure the financial security of ABAG POWER, and its ability to implement the long term gas purchasing policies and strategy. To that end,

¹ The Administering Member may be modified with a 2/3 vote of the ABAG POWER Board. (ABAG POWER JPA §7)

² ABAG POWER maintains separate agreements for 'core' and 'noncore' customers reflecting the different regulations imposed on the relevant customer class.

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



we point to the following sections in the program and governing documents that support the program policies:

Natural Gas Sales and Aggregation Agreement (NGSAA):

- §5.5: 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.
- §9.2: Public Agency will pay, in monthly installments, sums representing payments for the natural gas and services provided under this Agreement.
- §9.3: Public Agency shall pay a working capital deposit to ABAG POWER prior to transferring accounts to the program. [Amount of deposit equals two times the estimated monthly payment.]
- §10: 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.
- §13.1: 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.

ABAG POWER Bylaws:

- §7A.2.2: The participants in a program will all collectively agree, in an Agreement separate from the JPA and these Bylaws, to assume all obligations, debts, and liabilities incurred by ABAG POWER in connection with the formation and/or implementation of such program.
- §10.2: Program Participants are required to pay any and all costs and expenses involved in or associated in any way with their particular Program. This obligation survives termination of ABAG POWER.
- §12.2: In the event ABAG POWER incurs any extraordinary or unanticipated costs, including, but not limited to, legal fees and/or litigation expenses, the Members will be assessed a fee or fees on a pro-rata basis as determined by the Board necessary to pay such extraordinary or unanticipated costs. This provision survives termination of ABAG POWER and/or each Member's participation in it.

Staff Recommendation. We believe the above language, taken in aggregate, clearly identifies the requirement of program participants to pay for all costs and expenses incurred, including but not limited to the forward purchase of natural gas extending beyond the current fiscal year's approved budget. We recommend the Executive Committee pass a resolution acknowledging the interpretation and understanding that the current agreements are sufficient in providing the necessary security for ABAG POWER and its gas purchasing policies.

**RESOLUTION NO. 18-01
ABAG PUBLICLY OWNED ENERGY RESOURCES
EXECUTIVE COMMITTEE**

**REVIEW AND ACKNOWLEDGEMENT OF GENERAL GAS PURCHASING
POLICIES AND FINANCIAL STABILITY OF ABAG POWER**

Whereas, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) have recently completed the staff consolidation of ABAG staff into MTC in accordance with the ABAG-MTC Contract for Services, dated May 30, 2017;

Whereas, section 3.3 of the ABAG-MTC Contract for Services states, “MTC rules for administration, personnel, payroll, employee relations, purchasing, contracting and other business operations shall apply to the services provided here under, to the extent to which they are compatible with ABAG policies”;

Whereas, ABAG POWER’s general gas purchasing policy allows for entering into contracts for gas delivery up to three years into the future;

Whereas, Sections 5.5, 9.2, 9.3, 10, and 13.1 of the Natural Gas Sales and Aggregation Agreement, and Sections 7A.2.2, 10.2, and 12.2 of the ABAG POWER Bylaws establish financial obligations of ABAG POWER members participating in the natural gas pool;

Whereas, with the aid of its staff, the Executive Committee has reviewed the above referenced governing documents of ABAG POWER, attached hereto as Exhibit A and Exhibit B.

Now, therefore be it resolved by the Executive Committee of the Board of Directors of ABAG POWER acknowledges that the current language in the existing agreements, taken in aggregate, identifies the requirement of program participants to pay for all costs and expenses incurred as a result of program operation, including but not limited to the forward purchase of natural gas extending beyond the current fiscal year’s approved budget.

This resolution was passed by the Executive Committee at its meeting on this 21st day of February 2018.

By: _____
Tonya Gilmore, Chair

AYES:
NOES:
ABSENT:
ABSTAIN:

Certification of Executive Board Approval

I, the undersigned, the appointed and qualified Secretary of the ABAG Publicly Owned Energy Resources (ABAG POWER), do hereby certify that the foregoing resolution was adopted by the Executive Committee of ABAG POWER at a duly called meeting held on the 21st day of February 2018.

Gerald L. Lahr, Secretary
ABAG POWER

Approved as To Legal Form

Adrienne D. Weil, Acting Legal Counsel
ABAG POWER

CORE 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

CORE NATURAL GAS SALES AND AGGREGATION AGREEMENT

This Core Natural Gas Sales and Aggregation Agreement, hereinafter "Agreement", is made and entered into as of this _____ day of _____ 20__, 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 core natural gas distribution services. ABAG POWER is a designated Core Transportation Agent (CTA) in accordance with PG&E's Rule 23 and Tariff G-CT ("Program"). Public Agency appoints ABAG POWER as its exclusive agent to coordinate its purchase and management of natural gas, on behalf of Public Agency for the facilities listed in Exhibit A, which is attached hereto and incorporated herein. All parties understand and agree that the authority for the Program is granted by and subject to the CPUC, as initially authorized by CPUC Decision No. 91-02-040 and as modified through various subsequent CPUC Decisions. This Agreement is pursuant to the Utility Aggregation Tariff Rate Schedule(s), Tariff Rules and terms and conditions set forth in such agreement. Public Agency represents and warrants that any prior aggregator authorizations which Public Agency may have executed will be terminated effective no later than the date of this authorization.
3. **Services:** ABAG POWER shall deliver, or cause to be 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 Participants;
 - 3.3 Perform nominations of gas purchased and transportation services on behalf of Public Agency's facilities as listed in Exhibit A;
 - 3.4 Monitor gas account imbalances;
 - 3.5 Generate invoices for all natural gas purchases and services for ABAG POWER to perform as required under the Agreement. Invoices will include the following information:
 - 3.5.1 For each facility listed in Exhibit A, the monthly usage, and 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 9.3; and

3.6 Provide general consultation services.

4. Enrollment Notification of Changes: Public Agency shall through the attached Exhibit A submit to ABAG POWER its list of accounts to be served hereunder. Public Agency represents and warrants that all facilities listed in Exhibit A distribute natural gas used by Public Agency and that none of the facilities will be serviced by another core transport agent as of the Start Date as defined in Paragraph 9.5. 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. 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:

5.1 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;

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

5.3 Nominating gas supplies on behalf of Public Agency;

5.4 Handling gas imbalances, gas storage, and all other operational transactions with the Utility in order to deliver gas to the Utility for subsequent redelivery to Public Agency; and

5.5 Arranging for payment of Program bills for natural gas, transportation and other Utility charges. 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.

Public Agency understands that if ABAG POWER's contract with the Utility terminates for any reason, on Public Agency's receipt of notice from Utility, Public Agency will receive gas service for Exhibit A accounts under core procurement service from the Utility commencing on the first day of

Public Agency's next billing cycle pursuant to the terms and conditions of the applicable core procurement Tariff Rate Schedule for each Public Agency's accounts.

6. Title: All purchase, transportation and other gas service contracts shall be in the name of ABAG POWER.

7. Term: Subject to the provisions of Paragraphs 12 and 13 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 of the year immediately following the execution date of this contract. Subject to Paragraph 13, the term of this Agreement shall be automatically extended for additional three-year periods on each July 1 provided that 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.

8. Fees: The operational fees for all services described in Paragraphs 3 and 5 shall be established by the ABAG POWER Board of Directors, hereinafter "Board".

9. Payment:

9.1 On a monthly basis, unless otherwise approved by Public Agency, ABAG POWER will provide, or cause to be provided, to Public Agency an invoice for the Public Agency's facilities serviced under this Agreement. Invoices will be directed to and payment is to be made directly by Public Agency to the escrow account designated pursuant to Paragraph 10 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. Late payment charges may, at ABAG POWER's sole discretion, be debited against Public Agency's Working Capital Account as defined in Paragraph 9.3.

9.2 ABAG POWER will invoice Public Agency, and Public Agency will pay, in monthly installments, sums representing payments for the natural gas and services provided under this Agreement (Invoiced Amounts). Initially, Invoiced Amounts will be based on ABAG POWER's estimate of Public Agency's consumption of natural gas for the month leveled to eliminate extreme consumption fluctuations but adjusted to reflect moderated seasonal fluctuations. Each invoice will also identify the costs, if any, of natural gas, including, but not limited to transportation charges and operational fees, and utility charges charged to Public Agency for the period identified in the invoice. Any disputes between the parties regarding the amount of any Actual Charges shall be resolved pursuant to Section H of Exhibit B to this Agreement, as defined in Paragraph 9.3, will be adjusted as soon as practicable to reflect the resolution of the dispute.

9.3 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 load (therms) times the current applicable rate (\$/therm).]

9.4 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.

9.5 In accordance with the terms of Paragraph 10, 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 deposits 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 13.3. ABAG POWER retains the right to modify Invoiced Amounts to increase the sum of working capital deposits in the Program in order to timely pay Actual Charges as they become due.

~~9.6 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.~~

9.7 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.

10. 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.

10.1 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.

10.2 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.

10.3 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.

11. Gas Program Pricing:

11.1 Allocation. The gas charges to Participants will include (a) cost of the gas commodity (gas charges), (b) applicable utility transportation charges, 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 supplier contract price divided by the

total monthly usage of Participants. Transportation and administrative charges will be allocated to each Participant based on gas usage.

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

11.3 Gas Purchasing. Under the policy direction of the Board, 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 the policy direction of the Board, has the power to execute all contracts reasonably necessary to deliver natural gas to each Participant.

12. Change of Regulations: Any future change in law, rule or regulation, or utility 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.

13. Cancellation of Service:

13.1 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.

13.2 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.

13.3 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 9.2, less any debits imposed pursuant to Paragraph 9.1 and less any outstanding Actual Charges owed by Public Agency.

14. 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.

15. 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.

16. 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.

17. 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 paragraph for ABAG POWER's files.

18. Indemnity: Public Agency shall indemnify and hold harmless ABAG, 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, ABAG POWER or their respective directors, officers, member agencies, agents or employees.

19. 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.

20. 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.: _____

ABAG POWER Notices

ABAG
P. O. Box 2050
Oakland, CA 94604-2050
Gerald L. Lahr, Program Manager
Telephone No: 510-464-7908
Facsimile No: 510-464-5508
Email: JerryL@abag.ca.gov

21. 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.

22. 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.

23. Other Contract Provisions: This Agreement shall be subject to the other standard provisions which are set forth in the attached Exhibit B, which is incorporated by this reference.

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

ABAG PUBLICLY OWNED ENERGY RESOURCES

By: _____
Henry L. Gardner, ABAG POWER President

Date: _____

Approved as to legal form and content:

By: _____
Kenneth K. Moy, Legal Counsel

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

Name of Public Agency: _____

PG&E Account Number	Street Address	City
1. <u>All Current Accounts with ABAG POWER</u>	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

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, Etc.** 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.** Neither ABAG, ABAG POWER or their respective directors, officers, employees or agents shall 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.

BYLAWS

OF

ABAG POWER

**adopted
October 22, 1997**

**amended
November 13, 1997**

**amended
October 17, 2002**

**amended
August 18, 2004**

**amended
October 19, 2016**

TABLE OF CONTENTS

ARTICLE 1 -- NAME	1
ARTICLE 2 -- OFFICES	1
2.1. Principal Office.....	1
2.2. Other Offices.	1
ARTICLE 3 --LIMITATION ON AUTHORITY	1
ARTICLE 4 -- MEMBER ENTITIES	1
ARTICLE 5 -- DEBTS AND LIABILITIES	1
ARTICLE 6 -- DIRECTORS	2
6.1. Powers.....	2
6.2. Directors and Alternates.	2
6.3. Vacancies.....	2
6.4. Meetings.	2
6.5. Quorum.	2
6.6. Rules of Order.....	3
6.7. Minutes.	3
6.8. Fees and Compensation of Directors.....	3
6.9. Delegation of Powers.....	3
ARTICLE 7 -- BOARD COMMITTEES	3
7.1. Executive Committee.....	3
7.2. Ad Hoc Committees.....	3
7.3. Meetings and Action of Committees.	4
ARTICLE 7A -- PROGRAMS AND PROGRAM COMMITTEES	4
7A.1. Programs.....	4
7A.2. General Program Guidelines.	4
7A.3. Program Committees.	4
ARTICLE 8 -- OFFICERS.....	4
8.1. Officers.	4
8.2. Election of Officers.	5
8.3. Removal of Officers.....	5
8.4. Vacancies.....	5
8.5. Resignation of Officers.....	5
8.6. Responsibilities of Officers.	5
8.7. Fees and Compensation.	6
ARTICLE 9 -- MEMBER INDEMNITY	6
ARTICLE 10 -- OBLIGATIONS OF PROGRAM PARTICIPANTS.....	6
10.1. Release and Indemnification.	6

10.2. Payment of Costs and Expenses	6
ARTICLE 11 -- ADMISSION, WITHDRAWAL, SUSPENSION AND EXPULSION.....	7
11.1. Conditions for Admission of a New Member.	7
11.2. Conditions to Permitting Withdrawal of a Member.....	7
11.3. Conditions to Permitting Suspension of a Member.....	7
11.4. Conditions to Permitting Expulsion of a Member.....	7
ARTICLE 12 -- FEES.....	8
12.1. Membership in ABAG POWER.	8
12.2. Extraordinary Costs.....	8
ARTICLE 13 -- ADMINISTRATIVE AGENCY.....	8
ARTICLE 14 -- PURCHASE OF INSURANCE.....	8
ARTICLE 15 -- EVENTS OF DEFAULT AND REMEDIES	8
15.1. Events of Default Defined.....	8
15.2. Remedies on Default.	9
15.3. No Remedy Exclusive.	9
15.4. Agreement to Pay Attorneys' Fees and Expenses.....	9
15.5. No Additional Waiver Implied by One Waiver.	9
ARTICLE 16 -- TERMINATION.....	10
16.1. Time of Termination.	10
16.2. Continuing Obligations.	10
16.3. Distribution of Assets.....	10
ARTICLE 17 -- AMENDMENTS.....	10
17.1. Amendment by Directors.	10
ARTICLE 18 -- RECORDS AND REPORTS.....	10
18.1. Maintenance of ABAG POWER Records.....	10
18.2. Inspection Rights.....	10
18.3. Maintenance and Inspection of JPA and Bylaws.	11
18.4. Inspection by Directors.	11
18.5. Financial Report.	11
18.6. Fiscal Year.....	11
ARTICLE 19 -- CONSTRUCTION AND DEFINITIONS	11

**BYLAWS OF
ABAG POWER
As Amended August 18, 2004**

ARTICLE 1 -- NAME

The name of this public entity is ABAG Publicly OWned Energy Resources (ABAG POWER)

ARTICLE 2 -- OFFICES

2.1. Principal Office.

The principal office for the transaction of the business of ABAG POWER is located at 375 Beale Street, San Francisco, County of San Francisco, California. The Board of Directors (Board) may change the principal office from one location to another. Any change of this location will be noted by the Secretary on these Bylaws opposite this section, or this section may be amended to state the new location.

2.2. Other Offices.

The Board may at any time establish branch or subordinate offices at any place or places.

ARTICLE 3 --LIMITATION ON AUTHORITY

ABAG POWER's exercise of its power under the ABAG POWER Joint Powers Agreement (JPA) and these Bylaws is restricted to the extent required under California Government Code Section 6509. The County of Contra Costa is hereby designated pursuant to said Section 6509. This designation may be changed by a two-thirds (2/3) vote of the Board provided that the designated agency must be a city or county in California.

ARTICLE 4 -- MEMBER ENTITIES

In addition to the original contracting parties (as the term is used in California Government Code Section 6502) to the JPA, any other public entity (as defined in California Government Code Section 6500), which becomes a contracting party pursuant to the JPA and these Bylaws, is a Member. Any contracting party which withdraws or is expelled pursuant to these Bylaws ceases to be a Member.

ARTICLE 5 -- DEBTS AND LIABILITIES

5.1. The debts, liabilities and obligations of ABAG POWER will not be the debts, liabilities or obligations of any or all of the Members. However, nothing in this section or the JPA :

5.1.1. prevents a Member or Members from agreeing, in a separate agreement, to be jointly and/or severally liable, in whole or in part, for any debt, obligation or liability of ABAG POWER, including but not limited to, any bond or other debt instrument issued by ABAG POWER, or

5.1.2. impairs the ability of any Member to undertake the responsibility described in subsection 5.1.1 of this section.

ARTICLE 6 -- DIRECTORS

6.1. Powers.

6.1.1. General Powers. Subject to the provisions of these Bylaws and the JPA, the business and affairs of ABAG POWER will be managed, and all powers will be exercised, under the policy direction of the Board.

6.1.2. Specific Powers. Without prejudice to these general powers, the Board also has the power to borrow money and incur indebtedness on behalf of ABAG POWER and cause to be executed and delivered for ABAG POWER's purposes, in ABAG POWER's name, promissory notes, bonds, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities and certificates of participation.

6.1.3. Program Guidelines. The Board also has the power to establish guidelines for the types of Programs to be undertaken by ABAG POWER.

6.2. Directors and Alternates.

Each Member will appoint a director, and may appoint an alternate director to the Board. The director and/or the alternate may be an elected official.

6.3 **Voting**. Only directors appointed by a Member which is participating in an ongoing program offered by ABAG POWER shall be entitled to cast a vote at the Board of Directors or any committee of ABAG POWER.

6.4 Vacancies.

6.4.1. Vacancies. Vacancies in directors' position will be filled as provided in Section 6.

6.4.2. Events Causing Vacancy. A vacancy on the Board exists on the occurrence of the following: (i) the death of any director; (ii) the removal, dismissal or resignation of a director from the position he/she held with the Member at the time he/she became a director; (iii) the declaration by resolution of the Board of a vacancy of the office of a director who has been declared of unsound mind by an order of court or convicted of a felony; or (iv) written notice to the Secretary from the appointing Member stating that the designation of the director or alternate has been revoked said revocation to be effective upon receipt, unless the notice specifies a later time.

6.4.3. Resignations. No director may resign when ABAG POWER would then be without at least three (3) directors in charge of its affairs.

6.4.4. Reduction or Increase in Number of Directors. At the beginning of a fiscal year, the authorized number of directors may be reduced or increased by the deletion or addition of a Member.

6.5. Meetings.

The Chair or Vice-Chair of the Board, or any ten (10) directors by written request, may call a meeting of the Board.

6.6. Quorum.

A forty percent (40%) of the directors entitled to cast a vote is a quorum for the transaction of business. Except for acts requiring a supermajority under these Bylaws or the JPA, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is an act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the quorum for that meeting, or if a supermajority is required, by the supermajority of the quorum for that meeting.

6.7. Rules of Order.

The Board may adopt rules of order to govern the conduct and procedure of Board meeting.

6.8. Minutes.

The Board will keep or cause to be kept written minutes of its proceedings, except executive sessions.

6.9. Fees and Compensation of Directors.

Directors and members of committees may receive such reimbursement of expenses as may be determined by resolution of the Board to be just and reasonable.

6.10. Delegation of Powers.

Except as otherwise proscribed in these Bylaws and the JPA, the Board may delegate any of its powers.

ARTICLE 7 -- BOARD COMMITTEES

7.1. Executive Committee.

The Executive Committee is a standing committee comprised of the Chair, Vice Chair and three (3) to nine (9) members entitled to cast a vote or their alternates which is hereby empowered to exercise all powers of the Board except as otherwise specifically proscribed in these Bylaws or the JPA, during times when the Board does not meet or is unable to convene a meeting. Any director or alternate may attend and participate in the discussion at any Executive Committee meeting.

7.1.1. Voting. Actions requiring a supermajority vote of the Board require a supermajority vote of the Executive Committee. All other actions require a vote of the majority of the committee.

7.1.2. Initial Members. The Chair shall nominate the initial members of the Executive Committee. The Board shall set the number of members and, at its sole discretion, ratify or disapprove the nominees, or appoint other members.

7.1.3. Term. Each member serves a term ending on the next December 31, beginning in 1998. A member may succeed himself/herself and may serve any number of consecutive or non-consecutive terms.

7.1.4. Vacancies. In the event, a vacancy on the Executive Committee occurs, the Chair may appoint a new member who will serve on the Executive Committee with all rights and duties until the new member is either ratified or disapproved at the next meeting of the Board.

7.2. Ad Hoc Committees.

Upon written notice after-the-fact, the Chair may designate one (1) or more ad hoc advisory committees, each consisting of two (2) or more directors or their alternates, to be ratified by and serve at the pleasure of the Board, and to exercise such powers as may be delegated to it, except that no ad hoc committee may:

7.2.1. take any final action on matters which, under the JPA, requires approval a majority or supermajority vote of Board;

7.2.2. amend or repeal Bylaws or adopt new Bylaws;

7.2.3. amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;

7.2.4. appoint any other committees of the Board or the members of these committees;

or

7.2.5. approve any transaction (1) to which ABAG POWER is a party and one or more directors have a material financial interest as defined in the California Government Code; or (2) between ABAG POWER and one or more of its directors or between ABAG POWER or any person in which one or more of its directors have a material financial interest.

7.3. Meetings and Action of Committees.

Meetings and action of Board and Program committees will be governed by, and held and taken in accordance with, the provisions of Sections 6.4-6.5 of these Bylaws, concerning meetings of directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members, except that the meetings of committees may be called by the Board. Minutes will be kept of each meeting of any committee and will be filed with ABAG POWER records.

ARTICLE 7A -- PROGRAMS AND PROGRAM COMMITTEES

7A.1. Programs.

The Board has the power, upon majority vote, to establish Programs within the purpose and power of ABAG POWER and to adopt general policy guidelines for their implementation. By adopting these Bylaws, the Board hereby establishes the following Programs:

7A.1.1. Natural Gas Aggregation. The program for the aggregation program natural gas (PANG) previously established by ABAG is hereby approved and ABAG POWER will assume all the duties, obligations, debts and liabilities incurred by ABAG in connection with the PANG upon ABAG POWER's receipt of written acknowledgment of such transfer from each participant in the PANG, vendor(s) and consultant(s), the California Public Utilities Commission (CPUC), the natural gas supplier, PG&E and ABAG.

7A.1.2. Electric Aggregation. ABAG POWER hereby approves an electric program for direct access through aggregation (DATA).

7A.2. General Program Guidelines.

The following guidelines apply to all programs established by ABAG POWER:

7A.2.1. Upon a two-thirds (2/3) vote, the Board will allocate ABAG's administrative fees, charges and costs among the Programs.

7A.2.2. The participants in a program will all collectively agree, in an Agreement separate from the JPA and these Bylaws, to assume all obligations, debts and liabilities incurred by ABAG POWER in connection with the formation and/or implementation of such program. Such agreement may impose joint and several liability on the participants for the program's debts, obligation and/or liabilities. However, nothing in this section requires joint and several liability.

7A.3. Program Committees.

There will be a program committee for each program. A program committee will be comprised of a number of directors equal to ten percent (10%) of the participants. Until more than one program is active, the Executive Committee will serve as the DATA Program Committee.

ARTICLE 8 -- OFFICERS

8.1. Officers.

The officers of ABAG POWER are the Chair, Vice-Chair, President, Secretary and Chief Financial Officer/Treasurer. The Chair and Vice-Chair (elected officers) will be elected. All directors are eligible to serve as an elected officer. The Board of Directors, or the Executive Committee between meetings of the Board of Directors, will appoint a President, Chief Financial

Officer and Secretary for ABAG POWER. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer/Treasurer may serve concurrently as the President.

8.2. Election of Officers.

At the first meeting of the Board, and as necessary thereafter, nominations for the offices of Chair and Vice-Chair, will be made and seconded by a director. If more than two (2) names are nominated for any one office, balloting occurs until a nominee receives a majority of the votes cast; provided that after the first ballot the nominee receiving the fewest votes will be dropped from the balloting. Each elected officer serves a term ending on the next December 31, beginning December 31, 1998. An elected officer may succeed himself/herself and may serve any number of consecutive or non-consecutive terms.

8.3. Removal of Officers.

An elected officer may be removed, with or without cause, by a majority vote of the Board at a regular or special meeting.

8.4. Vacancies.

Any vacancy in any office because of death, resignation, removal, disqualification, or any other cause will be filled for the balance of the vacated term in the manner prescribed in these Bylaws for regular appointments to that office; provided, however, that such vacancies may be filled at any regular or special meeting of the Board.

8.5. Resignation of Officers.

In the absence of a contrary written agreement, any officer may resign at any time by giving written notice to the President or Secretary. Any resignation takes effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in that notice, the acceptance of the resignation is not necessary to make it effective.

8.6. Responsibilities of Officers.

8.6.1. Chair of the Board. The Chair of the Board presides at meetings of the Board and exercises and performs such other powers and duties as may be from time to time assigned to him/her by the Board or prescribed by the Bylaws.

8.6.2 Vice-Chair of the Board. The Vice-Chair of the Board fulfills all the duties of the Chair in his/her absence.

8.6.3. President. Subject to such supervisory powers as may be given by the Board of Directors to the Chair of the Board, the President generally supervises, directs, and controls the business and the employees of ABAG POWER. He or she has such other powers and duties as may be prescribed by the Board or the Bylaws.

8.6.4. Secretary. The Secretary will:

(i) Book of Minutes. Keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of directors and committees of ABAG POWER, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings.

(ii) Notices and Other Duties. Give, or cause to be given, notice of all meetings of the Board and Committees of ABAG POWER required by the Bylaws to be given. He or she has such other powers and perform such other duties as may be prescribed by the Board.

8.6.5. Chief Financial Officer. The Chief Financial Officer perform as follows:

(i) Books of Account. The Chief Financial Officer keeps and maintains, or causes to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of ABAG POWER, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account will be open to inspection by any director at all reasonable times.

(ii) Deposit and Disbursement of Money and Valuables. The Chief Financial Officer deposits all money and other valuables in the name and to the credit of ABAG POWER with such depositories as may be designated by the Board; disburses the funds of ABAG POWER as may be ordered by the Board; renders to the directors, whenever they request it, an account of all of his/her transactions as Financial Officer and of the financial condition of ABAG POWER; and has other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(iii) Bond. If required by the Board, the Chief Financial Officer will give ABAG POWER a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his/her office and for restoration to ABAG POWER of all its books, papers, vouchers, money, and other property of every kind in his/her possession or under his/her control on his/her death, resignation, retirement, or removal from office.

8.7. Fees and Compensation.

The officers may receive such reimbursement of expenses as may be determined by resolution of the Board to be just and reasonable.

ARTICLE 9 -- MEMBER INDEMNITY

Each Member hereby agrees to indemnify and hold harmless all other Members to the extent any liability is found or imposed against said Member pursuant to California Government Code Section 895.2.

ARTICLE 10 -- OBLIGATIONS OF PROGRAM PARTICIPANTS

10.1. Release and Indemnification.

Program participants will indemnify and save ABAG POWER and ABAG, their respective members, directors, officers and employees of each of the foregoing harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of

10.1.1. any bond or other debt instrument or evidence of indebtedness issued by ABAG POWER to pay for any costs, fees or expenses incurred, or to be incurred, in connection with the program,

10.1.2. any breach or default on the part of the participant in the performance of any of its obligations under the program, and

10.1.3. any act or negligence of the participant or of any of its agents, contractors, servants, employees or licensees with respect to the program, except for liability arising out of the willful misconduct, gross negligence, or breach of a contractual duty by ABAG POWER or ABAG, or their members or their officers, agents, employees, successors or assigns.

10.2. Payment of Costs and Expenses.

Program Participants are required to pay any and all costs and expenses involved in or associated in any way with their particular Program. This obligation survives termination of ABAG POWER.

ARTICLE 11 -- ADMISSION, WITHDRAWAL, SUSPENSION AND EXPULSION

11.1. Conditions for Admission of a New Member.

Each applicant for membership in ABAG POWER will meet the following minimum qualifications:

11.1.1. such new Member must be a public entity in the State of California and a member or cooperating member of ABAG;

11.1.2. adopt a resolution approving entry into ABAG POWER, designating a director, authorizing the execution of the JPA, and acknowledging these Bylaws;

11.1.3. approved for admission to ABAG POWER by a vote of at least two-thirds (2/3) of the authorized directors of the Board; and

11.1.4. paid such fees, expenses and costs as may be set by the Board.

11.2. Conditions to Permitting Withdrawal of a Member.

A Member may withdraw provided that the following conditions are satisfied:

11.2.1. such Member is not in default of any of its obligations to pay any costs or fees assessed by the Board;

11.2.2. such withdrawal will not cause ABAG POWER to be in default or breach of any agreement to which it is a party, or of any bond or other evidence of indebtedness issued by ABAG POWER;

11.2.3. not later than one hundred and eighty (180) days immediately preceding the effective date of such withdrawal, such Member has provided written notice to ABAG POWER of its intent to withdraw;

11.2.4. such withdrawal is effective on June 30; and

11.2.5. at least two (2) directors will be authorized after such withdrawal. In the event fewer than two (2) directors would be authorized, said Member may not withdraw until all principal of and interest on any and all bonds and other evidences of indebtedness issued by ABAG POWER have been paid in full. Notice to withdraw is revocable by the Member if such written revocation is received by ABAG POWER no later than December 1.

11.3. Conditions to Permitting Suspension of a Member.

ABAG POWER may suspend a Member from ABAG POWER subject to the following conditions:

11.3.1. the Member is in default under the terms of the JPA, these Bylaws, any contract executed by the Member in connection with any ABAG POWER program, any bond or other evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part; and

11.3.2. ABAG POWER has given written notice of the default described in subsection 11.3.1. to the defaulting Member; and

11.3.3. not earlier than thirty (30) days after transmittal of the notice and not later than the sixty (60) days immediately preceding the effective date of such suspension, two-thirds (2/3) of the authorized directors votes to suspend said Member.

11.4. Conditions to Permitting Expulsion of a Member.

ABAG POWER may expel a Member from ABAG POWER subject to the following conditions:

11.4.1. the Member is in default under the terms of the JPA, these Bylaws, any contract executed by the Member in connection with any ABAG POWER program, any bond or other

evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part; and

11.4.2. ABAG POWER has given written notice of the default described in subsection 11.4.1. to the defaulting Member; and

11.4.3. not earlier than thirty (30) days after transmittal of the notice and not later than the sixty (60) days immediately preceding the effective date of such expulsion, two-thirds (2/3) of the authorized directors votes to expel said Member.

ARTICLE 12 -- FEES

12.1. Membership in ABAG POWER.

No fees may be assessed to join or continue membership in ABAG POWER.

12.2. Extraordinary Costs.

In the event ABAG POWER incurs any extraordinary or unanticipated costs, including, but not limited to, legal fees and/or litigation expenses, the Members will be assessed a fee or fees on a pro-rata basis as determined by the Board necessary to pay such extraordinary or unanticipated costs. This provision survives termination of ABAG POWER and/or each Member's participation in it.

ARTICLE 13 -- ADMINISTRATIVE AGENCY

ABAG is designated in the JPA as the administrative agency for ABAG POWER. As such, ABAG will provide necessary administrative services for ABAG POWER pursuant to a service agreement.

ARTICLE 14 -- PURCHASE OF INSURANCE

In conformance with the procedures and criteria developed by it, the Board may cause ABAG POWER to purchase commercial insurance or reinsurance or terminate commercial insurance or reinsurance upon a majority vote.

ARTICLE 15 -- EVENTS OF DEFAULT AND REMEDIES

15.1. Events of Default Defined.

The following are "events of default" under the JPA and these Bylaws, and the terms "events of default" and "default" means, whenever they are used in the JPA and these Bylaws, with respect to a Member, any one or more of the following events:

15.1.1. failure by such Member to observe and perform any covenant, condition or agreement on its part to be observed or performed under the JPA, to comply with these Bylaws or to comply with a ABAG POWER program requirement (including but not limited to any contract executed by the Member in connection with any program, any bond or other evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part) other than as referred to in clause 15.1.2. of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to such Member by ABAG POWER or the Secretary; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, ABAG POWER, or the Secretary, as the case may be, will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Member within the applicable period and diligently pursued until the default is corrected. After such an extension, failure to diligently pursue or to achieve corrective

action is a separate "event of default" under this clause requiring notice but not requiring that ABAG POWER consent to any extension.

15.1.2. non-payment of any fees assessed by the Board; or

15.1.3. the filing by such Member of a case in bankruptcy, or the subjection of any right or interest of such Member under the JPA or these Bylaws to any execution, garnishment or attachment, or adjudication of such Member as a bankrupt, or assignment by such Member for the benefit of creditors, or the entry by such Member into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar act which may hereafter be enacted.

15.2. Remedies on Default.

15.2.1. Whenever any event of default referred to in subsection 15.1.1. of this Article has occurred and is continuing, it will be lawful for ABAG POWER to exercise any and all remedies available pursuant to law or granted pursuant to the JPA and these Bylaws.

15.2.2. In the event that ABAG POWER elects to expel any defaulting Member, subject to the conditions described and in the manner provided in Section 11.4 of these Bylaws, the Member nevertheless agrees to pay ABAG POWER all costs, losses or damages arising or occurring as a result of such default and termination, and administrative and legal costs incurred in noticing the default and effecting the expulsion. No such expulsion becomes effective, by operation of law or otherwise, unless and until ABAG POWER has given written notice of such expulsion to the Member; no such expulsion will be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided; and no such expulsion terminates the obligation of the expelled Member to pay any fees assessed prior to such expulsion.

15.3. No Remedy Exclusive.

No remedy conferred herein upon or reserved to ABAG POWER is intended to be exclusive and every such remedy is cumulative and is in addition to every other remedy given under the JPA or these Bylaws, now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle ABAG POWER to exercise any remedy reserved to it in these Bylaws, it is not necessary to give any notice, other than such notice as may be required in these Bylaws or by law.

15.4. Agreement to Pay Attorneys' Fees and Expenses.

In the event either ABAG POWER or a Member should be in default under any of the provisions of these Bylaws and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

15.5. No Additional Waiver Implied by One Waiver.

In the event any agreement contained in the JPA and these Bylaws should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

ARTICLE 16 -- TERMINATION

16.1. Time of Termination.

ABAG POWER may be terminated upon the written consent of all of the Members if the effective termination date and such written consents are delivered to ABAG POWER and the Secretary at least sixty (60) days prior to the effective termination date provided that all principal of and interest on any and all bonds and other evidences of indebtedness issued by ABAG POWER are paid in full.

16.2. Continuing Obligations.

After the termination date, ABAG POWER will continue to be obligated to pay, or cause to be paid any amounts due for winding up its affairs, including but not limited to any litigation costs and/or extraordinary costs associated with a financing transaction. After the effective termination date, each Member has a continuing obligation to pay any fees assessed prior to the effective termination date.

16.3. Distribution of Assets.

In the event any assets remain after winding up the affairs of ABAG POWER, such sums will be distributed to the Association of Bay Area Governments.

ARTICLE 17 -- AMENDMENTS

17.1. Amendment by Directors.

Subject to the limitations set forth below, the Board may adopt, amend or repeal Bylaws. Such power is subject to the following limitations:

17.1.1. The Board may not amend a Bylaw provision fixing the authorized number of directors or the minimum and maximum number of directors.

17.1.2. If any provision of these Bylaws requires the vote of a larger proportion of directors than a simple majority, such provision may not be altered, amended or repealed except by vote of such larger number of directors.

17.1.3. The Board may not delete or amend Bylaw provisions requiring compliance with the JPA.

ARTICLE 18 -- RECORDS AND REPORTS

18.1. Maintenance of ABAG POWER Records.

ABAG POWER will keep:

18.1.1. Adequate and correct books and records of account; and

18.1.2. Minutes in written form of the proceedings of its Board, and committees of the Board.

All such records will be kept at ABAG POWER's principal executive office, or if its principal executive office is not in the State of California, at its principal business office in this state.

18.2. Inspection Rights.

18.2.1. Any Member may inspect the accounting books and records and minutes of the proceedings of the Board and committees of the Board, at any reasonable time, for a purpose reasonably related to such person's interest.

18.2.2. Any inspection and copying under this section may be made in person or by an agent or attorney or the entity entitled thereto and the right of inspection includes the right to copy and make extracts.

18.3. Maintenance and Inspection of JPA and Bylaws.

ABAG POWER will keep at its principal executive office the original or copy of the JPA and these Bylaws as amended to date, which will be open to inspection by ABAG POWER or any Member at all reasonable times during office hours.

18.4. Inspection by Directors.

Every director has the absolute right at any reasonable time to inspect all non-confidential books, records, and documents of every kind and the physical properties of ABAG POWER and each of its subsidiary Authorities. This inspection by a director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

18.5. Financial Report.

18.5.1. As soon as possible after the close of ABAG POWER's fiscal year, the Board will cause an annual report prepared by a Certified Public Accountant to be sent to the governing body of each Member.

18.5.2. The report required by this section will be accompanied by any report thereon of independent accountants, or, if there is no such report, by the certificate of an authorized officer of ABAG POWER that such statements were prepared without audit from the books and records of ABAG POWER.

18.6. Fiscal Year.

ABAG POWER's fiscal year is July 1 to June 30.

ARTICLE 19 -- CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Civil Code will govern the construction of these Bylaws. Without limiting the generality of the above, the term "person" includes both ABAG POWER and a natural person and any capitalized term not defined in these Bylaws will have the meaning ascribed to it in the JPA.

I:\staff\kkm\p3\Bylaws fin Amd 3 fin

ABAG POWER Natural Gas Program
FY 2017-18 Monthly Summary of Operations

	days/mo.	Jul-17 31	Aug-17 31	Sep-17 30	Oct-17 31	Nov-17 30	Dec-17 31	Jan-18 31	Feb-18 28	Mar-18 31	Apr-18 30	May-18 31	Jun-18 30	Total
Gas Purchases⁽¹⁾														
Purchase 1	Qty	15,500	15,500	14,986	15,442	15,000	15,489	15,500	14,000	15,500	15,000	15,500	15,000	182,417
	Price	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	
Purchase 2	Qty	15,500	15,500	14,664	15,436	15,000	15,487	15,500						107,087
	Price	\$2.73	\$2.71	\$2.70	\$2.56	\$2.69	\$2.89	\$2.61						
Purchase 3	Qty	17,500	18,900	19,900	23,925	24,500	50,500	50,150						205,375
	Price	\$3.22	\$3.28	\$3.30	\$3.15	\$3.15	\$2.93	\$2.98						
Purchase 4	Qty													0
	Price													
Purchase 5	Qty													0
	Price													
Total Quantity Purchased		48,500	49,900	49,550	54,803	54,500	81,476	81,150	14,000	15,500	15,000	15,500	15,000	494,879
Total Purchase Cost		\$144,263	\$149,683	\$149,323	\$160,329	\$161,616	\$238,407	\$235,675	\$41,230	\$45,648	\$44,175	\$45,648	\$44,175	\$1,460,170
Backbone Shrinkage (Dths)		(372)	(372)	(369)	(412)	(360)	(373)	(372)						
WACOG ⁽²⁾		\$3.00	\$3.02	\$3.04	\$2.95	\$2.99	\$2.94	\$2.92	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95
Storage/Inventory														
Total Injections/ (Withdrawals)		8,736	9,010	9,060	8,602	6,080	(15,800)							25,688
Total Inventory Quantity (Dths)		30,659	39,669	48,729	57,331	63,411	47,611							
Total Inventory (\$)		\$96,221	\$123,260	\$150,639	\$176,755	\$194,679	\$146,173							
Avg. Inventory Rate (\$/Dth)		\$3.14	\$3.11	\$3.09	\$3.08	\$3.07	\$3.07							
Gas Program Monthly Expenses (from Financial Reports)														
Cost of Energy Used ⁽³⁾		\$ 149,766	\$ 153,725	\$ 151,384	\$ 165,949	\$ 205,294	\$ 239,542							\$ 1,065,661
Program Operating Expenses ⁽⁴⁾		26,674	35,792	26,058	23,303	31,555	41,283							184,665
Subtotal		\$ 176,440	\$ 189,517	\$ 177,442	\$ 189,252	\$ 236,849	\$ 280,825	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,250,326
Rate (\$/Dth)		\$4.44	\$4.75	\$4.55	\$4.17	\$4.10	\$3.47							\$4.13
PG&E Pass-through costs ⁽⁵⁾		207,190	210,474	168,153	269,120	214,379	431,177							1,500,494
Total ABAG POWER Cost		\$ 383,631	\$ 399,991	\$ 345,595	\$ 458,372	\$ 451,228	\$ 712,002							\$ 2,750,820
Actual (metered) Gas Usage														
Core ⁽⁶⁾		32,234	30,553	31,108	39,455	53,339	73,817							260,506
Non Core		7,544	9,336	7,885	5,947	4,394	7,148							42,254
Total Program Usage		39,778	39,890	38,993	45,403	57,733	80,964	0	0	0	0	0	0	302,760
ABAG POWER Total Core Rate		\$ 10.86	\$ 11.64	\$ 9.96	\$ 10.99	\$ 8.12	\$ 9.31							
PG&E Rate⁽⁷⁾														
Procurement Charge ⁽⁸⁾		3.03	3.12	2.56	2.99	3.25	3.59	3.56	3.89					3.75
Transportation/Other Charge ⁽⁹⁾		6.43	6.89	5.41	6.82	4.02	5.84							
Total PG&E Rate		\$ 9.46	\$ 10.01	\$ 7.97	\$ 9.81	\$ 7.27	\$ 9.43	\$ 3.56	\$ 3.89	\$ -	\$ -	\$ -	\$ -	\$ 3.75

ABAG POWER Natural Gas Program

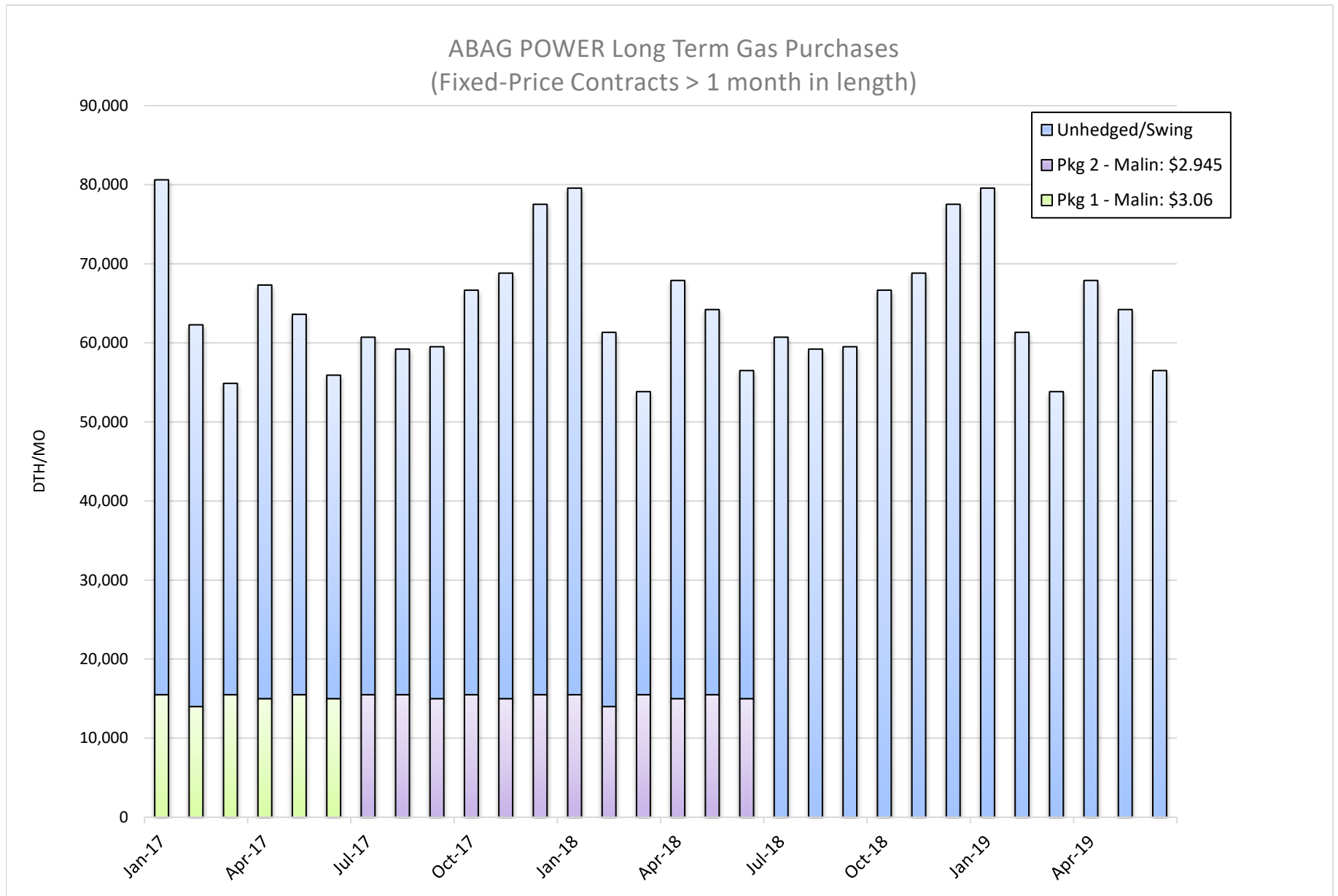
FY 2017-18 Monthly Summary of Operations

	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Total
G-NR1 Rate Comparison													
Monthly Rate Difference (\$/Dth)	1.40	1.63	1.99	1.18	0.85	(0.12)							
Monthly Savings (\$)	(45,238)	(49,748)	(61,777)	(46,475)	(45,456)	9,130							
Cumulative 'Savings' (\$)	(45,238)	(94,986)	(156,764)	(203,238)	(248,694)	(239,564)							
Cumulative 'Savings' (%)	-14.8%	-15.6%	-18.3%	-16.3%	-15.2%	-10.3%							
Monthly Index Postings													
NGI Bidweek for PG&E Citygate	\$3.25	\$3.28	\$3.34	\$3.17	\$3.19	\$3.12	\$2.86	\$2.97					
Gas Daily Avg. for PG&E Citygate	\$3.23	\$3.28	\$3.29	\$3.13	\$3.12	\$2.92	\$2.96						
NGI Bidweek for Malin	\$2.72	\$2.70	\$2.69	\$2.55	\$2.68	\$2.88	\$2.60	\$2.70					
G-NR2 Cumulative Savings	-18.3%	-19.0%	-22.0%	-19.9%	-19.1%	-13.9%							
G1 & GM Cumulative Savings	-12.9%	-7.2%	-6.5%	-3.2%	-2.2%	0.9%							
G-NGV1 & G-NGV2 Cumulative Savings	-18.6%	-10.0%	-8.6%	-4.8%	-4.0%	-0.6%							

Notes:

- (1) All gas quantities in Dth and rates in \$/Dth. (Does not include imbalance purchases traded to storage.)
- (2) Weighted Average Cost of Gas (WACOG) at PG&E Citygate
- (3) Includes costs to transport gas to PG&E Citygate from alternate delivery points, as well as physical storage costs.
- (4) Includes scheduling fees, billing fees, administrative costs and misc. expenses; less interest income.
- (5) PG&E charges billed to ABAG POWER via EDI process and passed through to customers. These costs do not necessarily tie directly to the actual gas usage shown above due to timing difference in reporting.
- (6) From billing data
- (7) Based on PG&E's G-NR1 rate schedule.
- (8) Includes: Procurement Charge, Capacity Charge, Brokerage Fee, Shrinkage, and Storage.
- (9) PG&E Transportation Charge; Customer Charge, and surcharge for Public Purpose Programs. Does not include Franchise Fees and City Taxes.

Gas Hedge Chart



Market Price Chart

5-Yr Historical/Future Market Price Indices @ PG&E Citygate



Legend:
- "Gas Daily"-Daily (Blue line)
- NGI-Monthly (Red line)
- Budget (NYMEX Futures 6/5/13) (Green line)
- Budget (NYMEX Futures 6/10/14) (Green line)
- Budget (NYMEX Futures 6/1/15) (Green line)
- Budget (NYMEX Futures 6/7/16) (Green line)
- Budget (NYMEX Futures 6/12/17) (Green line)

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



DATE: February 21, 2018
TO: ABAG POWER Executive Committee
FROM: Jerry Lahr, ABAG POWER Manager
RE: Regulatory Proceedings and Legal Involvement

The below information is intended to provide a brief summary of expenses-to-date related to regulatory involvement and external legal counsel during Fiscal Year 2017-18.

Expenses-to-date and Remaining Budget.

Approved FY 2017-18 Budget for External Legal Expenses	\$10,000.00
Less: Regulatory Involvement	(1,827.68)
Less: External Legal Counsel	<u>(2,500.00)</u>
Remaining Budget:	\$5,672.32

Regulatory/Legal Involvement.

- Pacific Gas and Electric Company's Advice Letter 3862-G to the California Public Utilities Commission.*
 - Among other things, this filing attempts to document a customer's acknowledgement of the release of their customer billing and payment information by PG&E to their Core Transport Agent (CTA)
- Pacific Gas and Electric Company's Advice Letter 3884-G to the California Public Utilities Commission.*
 - This filing requests approval of PG&E's Implementation of CTA Self-Managed Storage
- CPUC Rulemaking to Implement Registration of Third Party Natural Gas Service Providers.*
 - Decision of Phase Two Issues Regarding Core Transportation Agents (CTAs)
- Joint Representation Agreement/Authorization & Waiver/Consent Letter*
 - Review of Joint Representation Agreement transmitted to Tonya Gilmore in November 2017

Potential Future Regulatory Involvement.

- Pacific Gas and Electric Company's 2019 Gas Transmission and Storage Rate Case (CPUC Proceeding No. A17-11-009)*
 - Application covering revenue requirement and rate information for years 2019-2021

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



2. *Pacific Gas and Electric Company's 2018 Gas Cost Allocation and Rate Design Application (CPUC Proceeding No. A17-09-006)*
 - Addresses PG&E's revenue requirement allocation and rate design for gas customers' issues that are not decided in GT&S proceedings.