

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. ABAG employees who performed work to implement and support POWER programs are now members of the 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. POWER acknowledges 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 assigned this function to the Consolidated Staff effective July 1, 2017.
 - (b) This 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 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 Brad Paul 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) are members of the Consolidated Staff.
 - (a) ABAG expects that they will continue to perform those functions and will take steps to ensure that this occurs.
 - (b) 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) Brian Mayhew, Chief Financial Officer of MTC, or his designee, as Chief Financial Officer and
 - (iii) Jerry Lahr, 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 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. 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 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 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 governing board of MTC. ABAG will share with each LCP, including POWER, the 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 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.

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: 3/29/18



Steve Heminger, Metropolitan
Transportation Commission Executive
Director, Acting Pursuant to the Contract
for Services dated May 30, 2017

ABAG Publicly Owned Energy Resources

Date: 4/3/2018



Tonya Gilmore, Chair

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:

Tonya Gilmore
City of Orinda
22 Orinda Way
Orinda, CA 94563
Email: tgilmore@cityoforinda.org