

RENEWABLE NATURAL GAS PROGRAM MEMBER AGREEMENT

By and Between

ABAG POWER

and

(Name of Public Agency)

RENEWABLE NATURAL GAS PROGRAM MEMBER AGREEMENT

This Renewable Natural Gas Program Member Agreement (“Agreement”) is made and entered into as of July 1, 2023, by and between the ABAG Publicly Owned Energy Resources, a California joint powers agency ("ABAG POWER"), and [*insert name and legal status of Member*] ("Public Agency").

RECITALS

- A. ABAG POWER currently conducts a voluntary program for pooled purchasing of natural gas on behalf of local government and special district members to provide cost savings, economies of scale that promote price stability and strategic monitoring and participation in regulatory and legislative proceedings.
- B. California has adopted various policies and regulatory requirements to achieve the State’s goals for reductions in greenhouse gas emissions, including programs and incentives to address the recycling of organic waste pursuant to Senate Bill 1383, which was adopted in 2016 (“SB 1383”) and the promotion and use of low carbon fuels pursuant to the low carbon fuel standard (“LCFS”) adopted by the California Air Resource Board (“CARB”).
- C. One of the key elements in the reduction of greenhouse gas emissions is the generation and use of biomethane, which is commonly referred to as renewable natural gas (“RNG”). For the purposes of this Agreement, the definition of RNG will include compliance credits and fuels generated using RNG, as well as alternative fuels that qualify as low carbon under LCFS.
- D. Pursuant to rules and regulations issued by the California Department of Resources Recycling and Recovery (“CalRecycle”) to implement SB 1383, local governments are required to procure products from the recycling of organic waste in accordance with jurisdictional targets established by CalRecycle (“SB 1383 Procurement Requirements”) and one of the ways to satisfy procurement targets is to purchase RNG that has been generated as a result of such recycling efforts (as permitted pursuant to 14 CCR Section 18993.1(f)).
- D. ABAG POWER established a procurement program for RNG on May 25, 2023 (the “RNG Program”) to allow members to voluntarily pool purchasing of RNG and related products that are delivered into the California gas transmission and/or distribution system or compliance credits which are eligible for use in California to further the objectives of the State and local public agencies to reduce greenhouse gas emissions and assist such agencies with meeting their SB 1383 Procurement Requirements.
- E. Public Agency desires to participate in the RNG Program pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals and the covenants, terms and conditions of this Agreement, the Parties hereby agree as follows:

AGREEMENT

1. RNG Program. Subject to the terms of the RNG Program approved by ABAG POWER and this Agreement, ABAG POWER shall provide directly or, at its option, shall contract to provide coordination services for the purchase and management of the following products on behalf of eligible members: (i) RNG, or its equivalent, that has been generated pursuant to the requirements of CalRecycle for the purpose of satisfying SB 1383 Procurement Requirements; (ii) RNG, or its equivalent, that is generated for purposes other than SB 1383 compliance, such as LCFS or general reductions in greenhouse gas emissions; or (iii) procurement compliance attributes associated with the generation of RNG, or its equivalent, that are recognized by CalRecycle through a credit or certification process that satisfies SB 1383 Procurement Requirements (“Compliance Credits”). Public Agency shall be a participant in the RNG Program (“Participant”).

2. Program Eligibility. The RNG Program is available to members of ABAG for RNG procurement needs within the State of California. Public Agency appoints ABAG POWER as its agent to coordinate the purchase and management of RNG and Compliance Credits that are purchased on behalf of Public Agency pursuant to this Agreement.

3. Services: ABAG POWER shall deliver, or cause to be delivered, the following services to Public Agency:

3.1 Analyze and evaluate supply and delivery strategies, including assessment of price and market index analyses, for Participant to use RNG and/or Compliance Credits to lower its greenhouse gas emissions, satisfy SB 1383 Procurement Requirements or comply with other policy or regulatory requirements;

3.2 Negotiate and implement agreements for the purchase and delivery of RNG and/or Compliance Credits for Participants;

3.3 Monitor delivery of RNG and/or Compliance Credits pursuant to procurement contracts, including prompt identification of shortfalls or imbalances;

3.4 Perform reporting of RNG and/or Compliance Credits with PG&E, CalRecycle and any other applicable regulatory authority, as necessary to ensure that purchases of RNG and/or Compliance Credits are properly allocated to Participants to satisfy SB 1383 Procurement Requirements;

3.5 Generate invoices for purchases of RNG and/or Compliance Credits for each Participant, as well as the fees for services payable to ABAG POWER; and

3.6 Such other services as are identified in the RNG Program from time to time, such as regulatory and legislative tracking and analysis.

4. Procurement Commitment.

4.1 Public Agency will provide ABAG POWER with a forecast of the procurement needs it desires to fill with RNG and/or Compliance Credits on a rolling three year basis commencing on the Effective Date (“Procurement Forecast”), including procurement for SB 1383 Procurement Requirements, procurement for non SB-1383 uses and alternative fuels that qualify for LCFS. Accordingly, the first Procurement Forecast will be for the fiscal years commencing on July 1, 2023, 2024 and 2025. Each such forecast will provide a range of volumes and prices upon which Public Agency is willing to enter into transactions confirmations with third parties sources of supply. Public Agency may update its Procurement Forecast at any time upon forty-five (45) days written notice to ABAG POWER, but will update its Procurement Forecast on an annual basis no later than June 1 of each year so that there is always a three year forecast of procurement requirements. The initial Procurement Forecast for Public Agency is attached hereto as Exhibit “A”.

4.2 ABAG POWER will use the Procurement Forecast of Public Agency and other participants in the RNG Program to seek out procurement opportunities for Public Agency and to negotiate prices and terms. ABAG POWER will use the price range identified in Public Agencies’ Procurement Forecasts to attempt to obtain the least cost supply offer(s) for participants. All procurements of RNG and/or Compliance Credits by ABAG POWER will be subject to execution of a transaction confirmation (each a “Transaction Confirmation”). If a Transaction Confirmation solely relates to purchases by Public Agency, then ABAG POWER will arrange the bilateral transaction between Public Agency and the provider and such confirmation will be a binding contractual commitment of Public Agency and the provider. If multiple members will participate in a transaction, then ABAG POWER reserves the right to act as the counterparty with the provider, in which case ABAG POWER will execute the Transaction Confirmation with the provider and will prepare a separate Transaction Confirmation between it and each of the Participants setting for the allocation to each Participant and the Participant’s contractual obligations as a beneficiary of the primary Transaction Confirmation. ABAG POWER will give Public Agency no less than ten (10) days written notice of each Transaction Confirmation setting forth the volume and pricing terms, all of which will be consistent with Public Agency’s Procurement Forecast. Public Agency will give notice to ABAG POWER within such period whether it accepts the Transaction Confirmation if it is a bilateral transaction or desires to participate in an ABAG POWER facilitated Transaction Confirmation. ABAG POWER will propose participation in a particular transaction opportunity based on the Participants that best fit the opportunity in its reasonable judgment and no Participant will have the right to participate in an opportunity without ABAG POWER’s consent. Although Public Agency will have the right of final approval with respect to each Transaction Confirmation, Public Agency acknowledges that ABAG POWER will be relying on the Procurement Forecast to negotiate and arrange transactions and that if Public Agency is consistently unwilling to enter into a Transaction Confirmation that meets the criteria set forth in the Procurement Forecast, ABAG POWER reserves the right to termination Public Agency’s participation in the RNG Program.

4.3 From time to time, ABAG POWER may present Public Agency with procurement opportunities that have terms outside of the Procurement Forecast, including participation in long term generation projects for RNG. The participation of Public Agency in such projects will be entirely on a voluntary basis upon mutually acceptable terms between ABAG POWER, Public Agency, other Participants and the RNG provider.

4.4 Once a Transaction Confirmation has been executed by Public Agency (either with ABAG POWER or directly with a provider), Public Agency agrees to comply with its obligations under such Transaction Confirmation, including all payment obligations, whether or not Public Agency remains in a Participant in the RNG Program. In no event will ABAG POWER be responsible for complying with any obligation of Public Agency under a Transaction Confirmation.

4.5 Public Agency will have the right to enter into its own negotiations and transactions for RNG and/or Compliance Credits, provided, however, that such transactions will be in addition to the volumes that Public Agency has submitted pursuant to any then current Procurement Forecast.

5. Agency Relationship. Public Agency authorizes ABAG POWER to act as its agent for the RNG 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 RNG Program and the negotiation of Transaction Confirmations, subject to the final approval and execution of Transaction Confirmation pursuant to Section 4.2. This authorization shall include the right to do and perform all acts contemplated in this Agreement, including, but not limited to:

5.1 Aggregating the supplies of RNG and/or Compliance Credits of Public Agency with those of other Participants pursuant to the terms and conditions of the RNG Program and the Transaction Confirmations to which Public Agency is a party;

5.2 Making all filings necessary to ensure that Public Agency is allocated RNG and/or Compliance Credits in accordance with the SB 1383 Compliance Requirements or other regulatory compliance programs;

5.3 Arranging delivery of RNG and resolving RNG imbalances, gas storage, and all other operational transactions with the appropriate utility or distribution provider for subsequent redelivery to Public Agency when physical deliveries are contemplated; and

5.4 Arranging for payment of bills by Public Agency for RNG and/or Compliance Credits, transportation and other utility, distribution provider or credit clearinghouse charges in accordance with the terms of each Transaction Confirmation.

6. Title. Title to all RNG and/or Compliance Credits will vest in the name in the Public Agency in accordance with the requirements of each Transaction Confirmation.

7. Term. The term of this Agreement shall be for a period of three (3) years, which will automatically be extended on July 1 of each year for one (1) additional year unless earlier terminated in accordance with this Agreement or notice of non-renewal is given by Public Agency or ABAG POWER no later than May 31 of each year.

8. Fees. Participation in the RNG Program will be subject to the payment of annual fees to reimburse ABAG POWER for the cost of providing the RNG Program and the services contemplated herein. Such fees will be set each year by the ABAG POWER Executive Committee and will be invoiced

on a monthly basis. The fees for RNG Program for the year following the Effective Date are attached hereto as Exhibit “B” (“Service Fees”).

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 amounts payable pursuant to each Transaction Confirmation (unless Public Agency is required by a bilateral Transaction Confirmation to pay such amounts directly), fees imposed by any utility, distribution provider or credit clearinghouse and any ABAG POWER Service Fees. 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 within thirty (30) days of receipt of the invoice. Late payment charges at the rate of one percent (1.0%) 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.

9.2 Upon execution of each Transaction Confirmation, if ABAG POWER will be handling payment and invoicing as the counterparty, then Public Agency shall pay a ABAG POWER a working capital deposit equal to two (2) months of payments for RNG and/or Compliance Credits. This deposit is refundable when a Transaction Confirmation terminates.

9.3 In the event Public Agency fails to make timely payment of any invoice from 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 pursuant to any Transaction Confirmation as well as reasonable charges associated with suspension and resumption of service hereunder.

10. Disbursement of Funds. In order to implement the payment of invoices for Transaction Confirmations where ABAG POWER will make payments on behalf of Public Agency, Public Agency agrees to the following:

10.1 A deposit account for the purposes of receiving payments by Participants and making payments to providers of RNG and/or Compliance Credits, and other payees as authorized by ABAG POWER will be established and ABAG POWER will use such account to make payments as required by each Transaction Confirmation until payment of each monthly invoice is received from Public Agency.

10.2 Only ABAG POWER may authorize release of funds from the deposit account and such shall only be to those payees allowed pursuant to this Agreement.

11. 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 or the RNG Program shall excuse both parties from their obligations, other than the obligation of Public Agency to make payments due under any Transaction Confirmation.

12. Termination.

12.1 Termination by Public Agency. Public Agency may cancel the Agreement by giving ABAG POWER written notice by May 31 of its intent to terminate on June 30 of the third year following the date notice was given or such later date as all Transaction Confirmations then in effect shall have terminated. Nothing contained in this Section 12 will allow Public Agency to terminate a Transaction Confirmation prior to the date specified therein.

12.2 Termination by ABAG POWER: Actions by any utility, clearinghouse, CalRecycle or other regulatory authorities with jurisdiction over the transactions contemplated in this Agreement 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 termination of the RNG Program (or a component of the RNG Program) and this Agreement by ABAG POWER. ABAG POWER shall give Public Agency written notice ninety (90) days prior to such termination and both parties shall work diligently to minimize the negative effects on ABAG POWER and the Public Agency of such termination.

13. Approvals. Public Agency will appoint a representative that is authorized to 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.

14. Attorneys' Fees. The prevailing party in any action to enforce the terms of this Agreement shall be entitled to recover reasonable attorneys' fees and costs as determined by the arbitrator.

15. 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.

16. 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 the RNG Program, incur short-term debt which may be secured by an assignment, encumbrance or hypothecation of this Agreement and/or payments due hereunder.

17. Notices: Notices will be given in writing and will be effective when (i) personally served; (ii) sent via commercial overnight courier on the date of receipt; or (iii) sent via electronic email, provided, however, that any notice sent via electronic mail will not be effective until acknowledged by the recipient of the electronic email (not by automated response). The following addresses for the giving of notices and billings shall be:

To Public Agency:

To ABAG POWER: Attn: Ryan Jacoby
ABAG POWER
San Francisco, CA 94105
Telephone No: (415) 820-7956
Email: rjacoby@bayareametro.gov

18. 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.

19. 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.

Signature page follows

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

ABAG POWER:

ABAG Publicly Owned Energy Resources,
a California joint powers agency

By: _____

Name: _____

Title: _____

Public Agency:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT A

PROCUREMENT FORECAST

Product	Renewable Natural Gas, Compliance Credits and similar products that qualify for 1383 Compliance Requirements.		
Period of Delivery	July 1, 2023 – June 30, 2023	July 1, 2024 – June 30, 2024	July 1, 2025 – June 30, 2026
Contract Quantity (dekatherms (Dth))	Up to [_____]	Up to [_____]	Up to [_____]
Contract Price (\$/Dth)	\$___ to \$___	\$___ to \$___	\$___ to \$___

Product	Renewable Natural Gas, Compliance Credits and similar products for non-1383 Compliance Purposes		
Period of Delivery	July 1, 2023 – June 30, 2023	July 1, 2024 – June 30, 2024	July 1, 2025 – June 30, 2026
Contract Quantity (dekatherms (Dth))	Up to [_____]	Up to [_____]	Up to [_____]
Contract Price (\$/Dth)	\$___ to \$___	\$___ to \$___	\$___ to \$___

Product	Alternative fuels that qualify for LCFS credits		
Period of Delivery	July 1, 2023 – June 30, 2023	July 1, 2024 – June 30, 2024	July 1, 2025 – June 30, 2026
Contract Quantity	Up to [_____]	Up to [_____]	Up to [_____]
Contract Price (\$/Dth)	\$___ to \$___	\$___ to \$___	\$___ to \$___

EXHIBIT B
SERVICE FEES