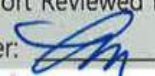


Agenda Report Reviewed by:  
City Manager: 

**CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM**

Meeting Date: January 19, 2021  
To: Honorable Mayor and City Councilmembers  
From: Vice Mayor Sarah Gurney  
City Administration  
Chris Crone – BayREN Program Manager  
Subject: Authorize City Manager/Attorney to sign the Water Upgrades \$ave Master Agreement for program services and adopt Resolution establishing a Fee Schedule for the Water Upgrades \$ave program.  
Recommendation That the City Council authorize City Manager/Attorney to sign the Master Agreement for Water Upgrades \$ave services and adopt accompanying Resolution establishing the Program Fee Schedule.  
Funding: Currently Budgeted: Yes \_\_\_\_\_ No X N/A  
Net General Fund Cost:  
If Cost to Other Fund(s),  
Fund:

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

**INTRODUCTION/PURPSOE:**

This item is to request the City Council authorize City Manager/Attorney to sign the Master Agreement for Water Upgrades \$ave services and adopt the accompanying Resolution for the Program Fee Schedule.

**BACKGROUND:**

On May 5, 2020, the Sebastopol City Council and staff received a Presentation by Chris Cone, Program Manager, BayREN Water Upgrades \$ave Program (formerly known as Water Bill Savings), which is led by the Sonoma County Regional Climate Protection Authority, and Authorized City Manager/Attorney to sign the Agreement for Water Upgrades \$ave services.

**DISCUSSION:**

The Water Upgrades \$ave Program is based on a Sonoma County Regional Climate Protection Authority Pay-As-You-Save<sup>®</sup> pilot launched in the Town of Windsor in 2012, and later piloted in the City of Hayward (2014) and East Bay Municipal Utility District (EBMUD; 2016); in 2019, the program transitioned from a pilot to a regional service. Participating municipal water utility customers can install water conservation improvements with no up-front cost — using an on-bill charge that is significantly lower than the estimated savings. Participants see immediate bill savings upon installation. The program helps local governments provide eligible customers with an enhanced and inclusive pathway to meet code requirements and reduce their utility bills.

The Water Upgrades \$ave Program is a collaboration of ABAG, BayREN, and Bay Area municipal water utilities. The Program provides turn-key services to eligible utility customers. ABAG pays Program Contractors for approved project installations and notifies the utility for that project location to place the charge on the customer's bill. The utility repays ABAG for services rendered at the project location using its authority to collect the on-bill charge. Utilities opt into the Program through a Master Agreement with ABAG and adoption of a Fee Schedule, and customers opt into the Program through a Participant Agreement. The Program is administered by a Program Operator; City Staff time is needed only for set-up tasks, tracking and collecting the on-bill charge, and regular ABAG repayment. Sebastopol would be the first city to join.

This Program addresses the important goal of water conservation by providing a way for customers to retrofit their properties with new efficient fixtures and devices, with the added value of updating older housing stock. With the water/sewer rate increased effective January 7, 2020, it also offers the utility and customers an investment opportunity that reduces the water/sewer bill.

**PUBLIC COMMENT:**

As of the writing of this staff report, the City has not received any public comment. However, staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment period for consent calendar items.

**PUBLIC NOTICE:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

**FISCAL IMPACT:**

No funding impacting for this program.

**RECOMMENDATION:**

Staff recommends the City authorize City Manager/Attorney to sign the Master Agreement for Water Upgrades \$ave services and adopt accompanying Resolution for the Program Fee Schedule.

**Attachment(s):**

Master Agreement for Water Upgrades \$ave Services  
Resolution with Program Fee Schedule

# Master Agreement for BayREN Water Upgrades Save

## Preamble

This Agreement for Services for the Bay Area Regional Energy Network Program Water Upgrades Save (this “Agreement”) is dated January 5, 2021, (“Effective Date”) and is between the Association of Bay Area Governments, a California joint powers authority (“ABAG”) and the City of Sebastopol, (“Partner Utility”). The Agreement facilitates the implementation of Bay Area Regional Energy Network (“BayREN”) program Water Upgrades Save (“Program”), which is funded in part by a Funding Agreement between ABAG, on behalf of BayREN, and Pacific Gas & Electric Company (“PG&E”) authorized by the California Public Utilities Commission (CPUC) Decision 15-10-028 approving, among other things, budget to fund implementation of BayREN activities through 2025. ABAG and Partner Utility may be referred to herein individually as a “Party” or collectively as the “Parties.”

## Recitals

Whereas ABAG administers through a third-party (“Program Operator”) the Program, a regional conservation effort to render Program Services (“Services”) for the financing, installation, and repair of water and energy efficiency improvements (“Improvements”) at the premises served by municipal water utilities participating in the Program.

Whereas a Partner Utility intends to participate in the Program so as to allow an individual or other entity that is recorded on the water utility account (“Customer”) to voluntarily receive Services approved for the Program.

Whereas a “Participant” shall be a Customer who agrees to Program terms and signs the Participant Agreement and a “Successor Customer” shall be a new owner or tenant who becomes a Customer at a Location and accepts water service during the cost recovery period.

Whereas Partner Utility has obtained approval of and will enforce a water utility schedule for rates and fees (“Program Schedule of Rates and Fees”) to allow for Partner Utility and ABAG cost-recovery for services rendered consistent with the model schedule for rates and fees included in Exhibit A at the premise where approved Improvements have been installed (“Locations”).

Whereas Partner Utility will repay ABAG for all approved costs associated with installation and repair of water and energy efficiency improvements at premises served by participating Partner Utility and other costs (“Total On-Bill Cost”) as provided for herein.

Whereas Partner Utility and ABAG agree to identify and perform specific services listed in Exhibit B in furtherance of the Program.

NOW THEREFORE, the parties agree as follows:

1. Term of Agreement

This agreement (“Agreement”) shall take effect immediately upon execution by both parties and shall remain in effect until Partner Utility has repaid ABAG for all costs (as outlined in Article 5: Utility-Approved On-Bill Program Charges) incurred by ABAG associated with Partner Utility’s participation in the Program, or this Agreement is terminated as outlined in the Article 17 (Termination).

2. ABAG Obligations

A. ABAG Obligations. ABAG shall perform the activities related to ABAG described in Exhibit B (Roles and Responsibilities) and Exhibit H (Program Manual).

B. Permits and Licenses. ABAG shall require all contractors providing Program Services according to the terms of the Contractor Agreement (“Program Contractors”) to obtain and maintain during the Term of Agreement all necessary licenses, permits, and certificates required by law for the provision of the Services.

3. Partner Utility Obligations

A. Partner Utility Obligations. Partner Utility shall perform the activities related to Partner Utility described in Exhibit B (Roles and Responsibilities) and Exhibit H (Program Manual).

B. Utility Administration. Partner Utility may, at its discretion, impose a project utility fee (“Utility Fee”), capped at a 2 percent maximum percentage of the total project cost as identified in Exhibit D (Total On-Bill Cost Detail) to be assessed as part of the utility-approved on-bill program charge (“On-Bill Charge”) for projects completed for its customers. Partner Utility must notify ABAG of any Utility Fee it wishes to impose prior to signing this agreement, specify the Utility Fee as part of its adopted Program Schedule of Rates and Fees, and seek permission from ABAG for any changes to the Utility Fee prior to the change going into effect. ABAG will pay Partner Utility its Utility Fee at a mutually agreeable time to be negotiated by ABAG and Partner Utility. Partner Utility shall include the Utility Fee as part of the On-Bill Charge and is fully responsible for reimbursing ABAG for any Utility Fee payment ABAG makes to Partner Utility consistent with the model schedule included in Exhibit A (Model Rate and Fee Schedule).

C. Personnel. Partner Utility has, or will secure at its own expense, all personnel required to perform the Services discussed in this Agreement as being performed by Partner Utility. All identified Partner Utility Services shall be performed by Partner Utility or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

**D. Payment. At the end of each month, Partner Utility shall, as servicer, collect On-Bill Charges from participating customers and remit a monthly payment (“Utility Payment”) to ABAG equal to the value of all billed On-Bill Charges for that month regardless of collections from Partner Utility’s customers.**

E. Successor Customers. Partner Utility will provide Successor Customers at the project location with a utility notice to new customers upon their applying for water service. This notice will explain their Program benefits, rights, and obligations until the full costs and fees for installed

project at that location have been recovered by ABAG. ABAG will support this noticing with as per the Partner Utility activities described in Exhibit B.

#### 4. Green Attributes.

Property owners or third-party ownership leasing firms shall retain rights to any Federal Investment Tax Credit or State Incentives, or Rebates related to projects installed through the Program. To the extent that any of green attributes, including but not limited to carbon credits, green tags, and greenhouse gas offsets, result from projects installed through the Program, Partner Utility and ABAG shall retain rights to allocate such attributes.

#### 5. Utility-Approved On-Bill Charges.

A. Utility-Approved On-Bill Charges. On-Bill Charges approved by Partner Utility shall include eligible and approved costs and fees as discussed in this Article and as agreed to in Exhibit D (Total On-Bill Cost Detail). Consistent with the Program Schedule of Rates and Fees adopted by the Partner Utility, On-Bill Charges will be assigned to the address and location of installed and approved projects and will be recovered through the water utility bill paid by the water utility customer at that location until ABAG is fully repaid. On-Bill Charges will include as applicable:

A1. Project Costs. ABAG will verify, approve, and pay all costs for Services performed at each project location as described herein (“Project Costs”). Project Costs will include but are not limited to: labor; materials; quality assurance and customer service; and contractor oversight.

A2. Capital Fee: ABAG may incur financing costs to provide and administer the up-front capital used by ABAG to pay for approved projects. If ABAG imposes a fee for cost recovery, it will itemize these costs and set a fee to recover these costs as identified in Exhibit D (Total On-Bill Cost Detail), which may be updated from time to time. For each project verified and approved by ABAG hereunder, Partner Utility shall cause to be paid to ABAG the fee (“Capital Fee”) set forth in Exhibit D (as may be updated from time to time). The Capital Fee shall be part of the monthly Utility Payment.

A3. ABAG Administration Fee. ABAG may incur costs to provide and administer Program Services. Some or all of these costs may be recovered through On-Bill Charges. If ABAG imposes a fee for cost recovery, it will itemize these costs and set a fee to recover these costs as identified in Exhibit D (Total On-Bill Cost Detail), which may be updated from time to time. For each project verified and approved by ABAG hereunder, Partner Utility shall cause to be paid to ABAG the fee (“ABAG Administration Fee”) set forth in Exhibit D (as may be updated from time to time). The ABAG Administration Fee shall be part of the monthly Utility Payment.

A4. Utility Fee. Partner Utility shall have the right to charge a Utility Fee to customers who complete an approved and verified project, as per Article 3 (Partner Utility Obligations, B. Utility Administration). Notwithstanding any provision in this Agreement to the contrary, neither ABAG nor Partner Utility customers will have any obligation to pay any fees to Partner Utility nor reimburse Partner Utility for expenses incurred by

Partner Utility in connection with, providing, or causing to be provided, the Services except for the Utility Fee. The Utility Fee will be Partner Utility's sole compensation for providing, or causing to be provided, the Services.

B. Additional Services. Partner Utility shall not be entitled to reimbursement for additional services performed by Partner Utility, unless ABAG and Partner Utility representatives authorize the additional services in writing prior to Partner Utility's performance of the additional services or incurrence of additional expenses and execute an amendment to the Agreement accordingly. Any additional services or expenses authorized by ABAG shall be compensated at the rates set forth in Exhibit D (Total On-Bill Cost Detail), or, if not specified, at a rate mutually agreed to by the Parties, prior to ABAG authorization.

**C. Payment. On-Bill Charges equal to the amount due from Participants and Successor Customers in any one month shall be payable by Partner Utility to ABAG at the end of each month regardless of the amount collected from Participants and Successor Customers by Partner Utility.**

## 6. Ownership of Documents; Intellectual Property.

A. Intellectual Property of Partner Utility. ABAG acknowledges and agrees that all use by ABAG or its agents of Partner Utility and or Governing Agency's name and logos shall be approved by Partner Utility prior to use. In addition, ABAG acknowledges and agrees that any and all intellectual property held by Partner Utility or its agents, includes computer software and all source code thereof developed by Partner Utility or its agents in performing the Services except for software modules paid for by ABAG funds, including all intellectual property rights contained therein (the "Proprietary Software"), is property of Partner Utility or its licensors and protected according to law. As necessary, Partner Utility agrees to provide ABAG with a revocable, non-transferable, and nonexclusive account license to use any Proprietary Software for purposes of accessing computer files containing data generated for the Services in order to perform ABAG's obligations under this Agreement or program evaluation or savings verification. Except for the license granted by this Agreement, Partner Utility retains all ownership and proprietary rights in and to the Proprietary Software.

B. Intellectual Property of ABAG. Partner Utility shall not obtain trademarks, copyrights, or other intellectual property rights that contain or are reasonably likely to be confused with ABAG. Partner Utility acknowledges and agrees that all intellectual property rights to the name "BayREN Water Upgrades \$ave" and all forms, agreements, and notices provided by ABAG shall belong to ABAG. Partner Utility agrees not to distribute any forms, agreements, or notices provided by ABAG or its Program Operator to any third party, including other utilities in California and outside of California, consultants, experts, etc. If required by law or regulation or required pursuant to a valid order of a court or regulatory agency to be disclosed by the Partner Utility, but only to the limit and extent of such required disclosure and prior to such disclosure, Partner Utility will provide ordering agency with notice that required disclosure is subject to intellectual property rights and request that confidentiality be maintained to the extent possible, and shall provide ABAG prompt written notice of such requirement. Notwithstanding the

foregoing, Partner Utility is hereby authorized to acknowledge in its marketing and branding for the Program that the Partner Utility's Program is offered through or in association with the ABAG Water Upgrades \$ave.

C. Program Data. Partner Utility acknowledges and agrees that non-identifying customer data, obtained during premises' assessments, including descriptions of units, their water using equipment, Participants' or Successor Customers' reports of usage, and pre- and post-installation billing histories, associated with participating customers and customers who receive and decline specific offers to participate may be used by ABAG or its consultants or its agents for planning and or evaluation purposes. To inform evaluations, Partner Utility will provide at least two years of post-installation billing data for each Participant, Successor Customer and customer who received and declined a specific offer to participate. All Participant and Customer data will be maintained and, as necessary, shared, consistent with the terms of Article 9 (Confidentiality).

## 7. Independent Contractor.

In performing Services under the Agreement, Partner Utility will be acting as an independent contractor and not as an agent or employee of ABAG. Partner Utility will have no authority to contract in the name of ABAG, and Partner Utility will be responsible for its own acts and those of its agents and employees.

Partner Utility has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Partner Utility who are assisting in the performance of Services under this Agreement. Partner Utility shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax, and all other laws and regulations governing such matters. Partner Utility shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

## 8. Conflicts of Interest.

The Partner Utility shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed by subconsultants or subcontractors under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to ABAG or the Partner Utility; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The Partner Utility shall not engage the services of any subconsultant or subcontractor on any work related to this Agreement if the subconsultant or subcontractor, or any employee of the subconsultant or subcontractor, has an actual or apparent organizational conflict of interest related to Services contemplated under this Agreement that cannot be mitigated in accordance with federal or state guidelines.

If at any time during the term of this Agreement the Partner Utility becomes aware of an organizational conflict of interest in connection with the Services performed by a subconsultant

or subcontractor hereunder, the Partner Utility shall immediately provide ABAG with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Partner Utility's written notice will also describe alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, ABAG becomes aware of an organizational conflict of interest in connection with performance of any work hereunder by a subconsultant or subcontractor, ABAG shall similarly notify the Partner Utility. In the event a conflict is presented, whether disclosed by the Partner Utility or its subconsultant or subcontractor, or discovered by ABAG, ABAG will consider the conflict presented and any alternatives proposed and meet with the Partner Utility to determine an appropriate course of action. ABAG's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this Article may subject the Partner Utility or its subconsultant or subcontractor to damages incurred by ABAG in addressing organizational conflicts that arise out of work performed by such subconsultant or subcontractor, or to termination of this Agreement for breach.

## 9. Confidentiality.

A. Confidential Information. Each Party agrees to establish such systems and procedures as may be reasonable to maintain the confidentiality of the other Party's Confidential Information (as defined below); provided, however, that such information may be disclosed (i) as required by law or in connection with any legal proceeding, (ii) to governmental or regulatory authorities having jurisdiction over such Party, (iii) to its legal counsel and auditors, (iv) if it has become publicly available other than as a result of a breach of this Article 9 (Confidentiality), (v) if such information was already in the possession of the receiving Party prior to execution of the Original Agreements, and (vi) in the case of Partner Utility, to its agents. "Confidential Information" shall mean all confidential and proprietary information disclosed by a Party to the other Party orally or in writing, including but not limited to customer account and personal identifying information; financial papers and statements, research and development activities, technology, vendor information, computer hardware and software, products, drawings, and trade secrets; and information regarding operating procedures, pricing methods, marketing strategies, customer relations, future plans, and business policies, methods, and practices; and other information reasonably deemed proprietary or confidential by the disclosing Party.

B. Non-Public Personal Information. In addition to the restrictions set forth above in Article 9(A) (Confidential Information), each Party agrees that it will use, preserve, protect, and disseminate any personally-identifiable information only in compliance with all applicable law (including but not limited to California Civil Code Section 1798 *et seq.*, all applicable provisions of the California Consumer Privacy Act), and Partner Utility requirements for this information as established in the Partner Utility's existing customer and privacy protocols as communicated in writing to ABAG.



## 10. Indemnification

Partner Utility agrees to indemnify and hold harmless ABAG and its commissioners, directors, officers, agents, consultants, and employees (collectively “ABAG Indemnified Parties”) from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorneys’ fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages, or pecuniary, financial, or economic losses of any kind whatsoever (collectively “Claims and Losses”) to the extent such Claims and Losses arise out of, pertain to, or relate to Partner Utility’s recklessness, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that Partner Utility has no obligation to indemnify and hold the ABAG Indemnified Parties harmless to the extent that the Claims and Losses are caused by the negligence of the ABAG Indemnified Parties.

Partner Utility further agrees to immediately defend the ABAG Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of, pertain to, or relate to any allegations of Partner Utility’s recklessness, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, Partner Utility agrees to either retain counsel to defend the ABAG Indemnified Parties or pay charges of the ABAG Indemnified Parties’ attorneys with regard to the Claims and Losses.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

## 11. Mutual Cooperation

A. Each Party shall provide the other Party with all pertinent data, documents, and other requested information as is reasonably available for proper performance of the Services. In the event any claim or action is brought against either Party or its agents relating to either Party’s performance of their obligations described in Exhibit B (Roles and Responsibilities) and Exhibit H (Program Manual), requesting Party shall be entitled to any reasonable assistance that requesting Party requires.

B. In the event any claim or action is brought against either Party or its agents relating to either Party’s performance of Services, the Party against whom the claim is brought shall be entitled to any reasonable assistance from the other Party.

## 12. Party Representatives

For the purposes of this Agreement, ABAG’s representative shall be the ABAG Executive Director, or such other person designated in writing by the ABAG Executive Director (“ABAG Representative”). The Partner Utility Representative shall directly manage Partner Utility’s performance of the Services. The Parties shall provide written notice of a change in Party Representatives.

**13. Compliance with Laws.**

All parties shall keep themselves informed of all local, state, and federal ordinances; laws; and regulations that in any manner affect those employed by it or in any way affect the performance of the Services, including those related to the privacy of personally identifiable information. Partner Utility and ABAG shall at all times observe and comply with all such ordinances, laws, and regulations.

**14. Records and Inspections.**

A. Partner Utility Billing Records. Partner Utility shall maintain full and accurate records with respect to all customer utility billing records covered under this Agreement. Such records shall include, but are not be limited to: records related to the projects installed at each location participating in the Program; the monthly On-Bill Charge payment amount(s) currently in effect for Improvements installed at each Location participating in the Program; the remaining cost recovery period(s) for each such Location, adjusted for missed payments and repairs; the current payoff amount, number, and amount of unbilled charges; and On-Bill Charges billed, payment amounts made, and payments missed (noting whether billed On-Bill Charges were unpaid, if the unit did not have active service and there were no billed charges for the period, or if charges were suspended due to Improvement failure).

B. ABAG Program Records. ABAG, or its subcontractors, shall maintain full and accurate records with respect to all Program and Participant and Successor Customer project activity covered under this Agreement. Partner Utility will be able to access any records for its Customers as needed through electronic access to this data provided by ABAG. Such records shall include, but not be limited to: a database of all project activity funded through the Program including the premise address, block and lot number, Assessor’s Property Number (APN), ownership information, original Project Costs and Total On-Bill Cost, Site Visit Expense, Program Fees, monthly On-Bill Charge, amortization schedules for each project under the Program, the date ABAG reported the work completed and arranged for payment to the Program Contractor(s) approved and verified to have performed the work, the name and phone number of the Program Contractor(s) that installed the Improvements, the number of each Improvement installed at that Location, Customer utility use (water, natural gas, electricity as available), and any issues and associated costs related to repair of installed Improvements, including Situational Expenses. All such information will be maintained and transferred according to Program protocols for data security and consistent with Article 9 (Confidentiality).

C. Physical Access to Records. For records not made available to either Party through electronic access, upon two (2) business days’ notice, requested Party shall make all records, invoices, timecards, cost control sheets, and other records maintained by requested Party in connection with this Agreement available, without charge to the requesting Party, during requested Party’s normal business hours for review and audit by requesting Party at ABAG’s offices. Subject to Article 9 (Confidentiality), requesting Party may examine and audit the records and make transcripts therefrom, and inspect all Program data, documents, and records of proceedings or activities.

## 15. Reporting.

A. Partner Utility shall provide payment reports to ABAG on a monthly basis, or as mutually agreed between the ABAG Representative and Partner Utility Representative, with such information as may be reasonably be requested by ABAG and in a form consistent with Exhibit E (Utility Payment Report Template).

B. Partner Utility agrees to make a good faith effort to participate in follow-up surveys and provide requested information approved by ABAG to assist in evaluating the effectiveness of the Program. Partner Utility further agrees to allow ABAG to send timely communications, follow-up surveys, and other appropriate information requests to customers participating in the Program to assist in evaluation the effectiveness of the Program.

## 16. Dispute Resolution

A. Participant and Successor Customer Disputes. Participants and Successor Customers may elect to use the Program's Alternate Customer Dispute Resolution process as follows. This Alternate Customer Dispute Resolution process may only be invoked by a Participant or Successor Customer that has signed an Alternate Customer Dispute Resolution. If Participant wants any dispute to be resolved in a court of law and does not sign this agreement, Participant cannot be required to use this process.

Parties to any dispute agree first to engage in informal discussions to attempt to resolve it. If informal discussions do not result in resolution of the dispute, the dispute will move to this ADR process conducted by a mutually acceptable independent third party who is not a party to the dispute. All parties agree any decision of the third party will be final and binding.

If no third party is acceptable to all parties, all parties agree that when Operator is not a party to the dispute, one of its staff will be an acceptable third party. If Operator is a party to a dispute and a mutually acceptable arbiter is not agreed upon, Operator will suggest individuals familiar with the Program who are not involved in the dispute. If none of these are acceptable to all parties, all parties agree to accept a decision by an agent of the Energy Efficiency Institute, Inc. (a Vermont firm that designed the system on which this Program is based).

Each party will limit its presentation to the arbiter to no more than 30 minutes and present no more than 20 pages of written material (in addition to a copy of this agreement). Personal appearance is not required. Third party fees, if any, will be paid by the losing party.

B. Informal Resolution of Disputes. Partner Utility and ABAG shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either Party may request that ABAG provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the ABAG Project Manager shall provide a written determination as to the dispute, including the basis for his or her decision. Upon Partner Utility's written acceptance of the ABAG Project Manager's determination, the Agreement may be modified, and the determination implemented or, failing agreement, ABAG may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the ABAG Project Manager's determination.

If the ABAG Project Manager's determination is not accepted by Partner Utility, the matter shall promptly be referred to senior executives of the Parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the Parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

C. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and Partner Utility that cannot be resolved through the informal efforts described above, may, by specific agreement of the Parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the Parties at the time.

D. Other Remedies. If a dispute is not resolved through discussion or the Parties do not agree to alternative dispute resolution, either Party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. Partner Utility must submit a claim pursuant to Government Code section 910 *et seq.* prior to filing a civil action against ABAG. Similarly, if Partner Utility is a public agency, ABAG must submit such a claim prior to filing a civil action against Partner Utility.

E. Pending Resolution. Partner Utility shall continue to work during the dispute resolution process in a diligent and timely manner as directed by ABAG and shall be governed by all applicable provisions of the Agreement.

F. Cost of Alternative Dispute Resolution Proceedings. Each Party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the Parties.

G. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either Party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

## 17. Termination

A. Right to Terminate or Suspend. Either Party may terminate or suspend this Agreement without cause at any time after giving written notice to the other Party at least ninety (90) calendar days before the termination or suspension is to be effective. Either Party may terminate this agreement for cause, defined as failure to abide by the terms of this Agreement and not correcting said failure after being provided reasonable notice of such failure, within 14 calendar days of notification.

B. Obligations upon Termination. Upon termination for cause, ABAG will cease to perform its assigned Services from Exhibit B (Roles and Responsibilities) for new Partner Utility customers

and will only complete work necessary to close out projects that have begun Program-approved work at the customer premise/property. Upon issuance by either Party of a termination notice (“Termination Notice”) without cause pursuant to section A of this Article 17, Partner Utility shall continue to perform the Partner Utility Activities and Responsibilities set forth in Exhibit B (Roles and Responsibilities) until the date specified in the Termination Notice or otherwise agreed by the Parties.

**Upon termination of this Agreement, Partner Utility shall pay ABAG for any remaining unbilled On-Bill Charges due for projects approved and verified through the effective date of termination.** Partner Utility shall also pay ABAG for documented incurred costs associated with commitments to provide Services in accordance with ABAG’s agreement with a Program Operator.

C. Obligations upon Suspension. Upon issuance by either Party of a suspension notice (“Suspension Notice”) pursuant to Article 17(A) (Right to Terminate or Suspend), receiving Party shall immediately cease providing Services until such date as the Parties agree to resume performance of the Agreement. If the Parties have not reached agreement on resumption of the Services within thirty (30) days of delivery of the Suspension Notice, then the Agreement shall be deemed terminated effective as of such date (or such later date as may be agreed by the Parties) and the provisions of Article 17(B) (Obligation upon Termination) shall apply.

D. Surviving Rights and Obligations. Neither termination nor completion of the Agreement as provided under Article 1 (Term of Agreement) will limit the rights, responsibilities, or liability of Partner Utility or ABAG arising out of any actions taken or obligations not satisfied prior to termination, including (without limitation) payments, or from ongoing obligations such as indemnification, confidentiality, rights, responsibilities regarding intellectual property, or participating in Program evaluations. Furthermore, termination will not end Partner Utility’s ongoing responsibilities as identified above regarding notice to Successor Customers, ownership of documents and intellectual property (including, without limitation, Program data and Partner Utility billing data), confidentiality, indemnification for actions occurring prior to termination, or any other obligation that by its nature would survive beyond termination.

## 18. Force Majeure.

Neither Party shall be liable for any failure to perform its obligations under this Agreement if subject Party presents reasonably acceptable evidence that such failure was due to acts of God, fire, earthquake or other casualty, or other causes beyond Party’s reasonable control and not due to any act or omission by subject Party.

## 19. Notices.

Any notices, consents, requests, demands, bills, invoices, reports, or other communications which either Party may desire to give to the other Party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Partner Utility’s and ABAG’s



## 23. Limitations on Liability.

A. No Recourse against Constituent Members of ABAG. ABAG is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to a joint powers agreement and is a public entity separate from its constituent members. ABAG shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. Partner Utility shall have no rights and shall not make any claims, take any actions, or assert any remedies against any of ABAG's constituent members or BayREN member agencies in connection with this Agreement.

B. Direct Damages. Neither Party shall be responsible under this Agreement to the other Party for special, indirect, incidental, punitive, exemplary, or consequential damages of any nature whatsoever, including losses or damages caused by reason of loss of use, loss of profits or revenue, interest charges (except as expressly provided herein), cost of capital, or claims of customers' or property owners' damages, whether liability arises as a result of breach of contract, tort liability (including negligence), strict liability, by operation of law, or in any other manner; provided, that the limitation of liability set forth in this Article 23(B) (Limitations on Liability) shall not apply to damages arising from a Party's fraud, gross negligence or willful misconduct, or to third-party indemnity claims pursuant to Article 10 (Indemnification).

## 24. Waiver.

No delay or omission to exercise any right, power, or remedy accruing to a Party under this Agreement shall impair any right, power, or remedy of such Party, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (a) effective unless it is in writing and signed by the Party making the waiver, (b) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (c) deemed to constitute a continuing waiver unless the writing expressly so states.

## 25. Exhibits.

The following Exhibits constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

Exhibit A: Model Rate and Fee Schedule

Exhibit B: Roles and Responsibilities

Exhibit C: Utility Program Profile

Exhibit D: Total On-Bill Cost Detail

Exhibit E: Utility Payment Report Template

Exhibit F: Participant Agreements (weblinked)

Exhibit G: Program Operator Scope of Services (weblinked)

Exhibit H: Program Manual (weblinked and reserved)

Exhibit I: Common Program Terms

## 26. Entire Agreement.

This Agreement, including all exhibits referred to herein, constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter hereof and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

## 27. Amendment of Agreement.

This Agreement may be amended only by a writing signed by both Parties. The ABAG Executive Director, or her designee, is authorized to sign an amendment to this Agreement on ABAG's behalf and without the ABAG's prior approval to make the following modifications to the Agreement: (a) name changes; and (b) changes in the Roles and Responsibilities of the Parties.

## 28. Headings.

The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

## 29. Word Usage.

Unless the context clearly requires otherwise, (a) the words "shall," "will," "must," and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

## 30. Time of the Essence.

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

## 31. Governing Law and Choice of Forum.

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State; venue of any action brought with regard to this Contract shall be in San Francisco, California.



### 32. Attorneys' Fees.

If any legal proceeding should be instituted by either of the Parties to enforce the terms of this Agreement or to determine the rights of the Parties under this Agreement, the prevailing Party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

### 33. Severability.

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid, or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

### 34. Authority to Execute Agreement.

Each Party has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement; the execution, delivery, and performance by it of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes the legal, valid, and binding obligation of such Party enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

IN WITNESS WHEREOF, the City of Sebastopol has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

ASSOCIATION OF BAY AREA  
GOVERNMENTS

CITY OF SEBASTOPOL

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Therese W. McMillan,  
Metropolitan Transportation Commission  
Executive Director, Acting Pursuant to the  
Contract for Services dated May 30, 2017

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Larry McLaughlin  
City Manager | City Attorney

## Exhibit A: Model Schedule of Rates and Fees

This Exhibit A provides a model for the schedule of rates and fees (Schedule) that must be adopted by the Partner Utility to enable on-bill collection as required for the Program. The Schedule must be adopted by resolution of the Partner Utility's Governing Agency and documented in the same manner as the Utility does for their existing rates and fees. Prior to adoption, Partner Utility shall work with ABAG to ensure the Partner Utility's proposed Schedule sufficiently references or otherwise incorporates the terms identified in the model schedule detailed below.

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### Applicability

This Schedule of Rates and Fees is applicable to water service customers of Utility participating in Water Upgrades Save (the Program) who meet the eligibility criteria specified in Section 1 below and receive service under the Program.

### Definitions

The definitions of capitalized terms used in this Fee Schedule are provided here.

**ABAG Administration Fee:** A percent charge on Project Costs paid to the Association for Bay Area Governments (ABAG) to support Program administration such as payment and accounting, expansion of services, dispute resolution, and reporting.

**Capital Fee:** A percent charge on Project Costs due to ABAG to recover financing costs for sourcing and administering capital.

**Contractor Agreement:** An agreement between a Program Contractor and the Program Operator that defines all contractor responsibilities, obligations, and payment terms.

**Cost Recovery Period:** The amount of time from the initial placement of the On-Bill Charge until the Total On-Bill Cost is paid.

**Customer:** Individual or entity/agency that is recorded on the water utility account at the Partner Utility at a specific Location.

**Do-It-Yourself (DIY) Participant:** Multifamily or commercial building owners who participate in the Program's DIY pathway, using their own staff or a contractor that is not a Program Contractor.

**Improvements:** Upgrades installed at the Location and approved by the Program Operator to deliver monthly utility bill savings.

**Intent to Participate Form:** An application signed by a potential Multifamily or Commercial Participant before a site visit can be scheduled stating the potential Participant's intent to participate in the Program and conditions for any Site-Visit Expense that may be charged to the potential Participant's water bill. Submission of an Intent to Participate Form is required for Multifamily and Commercial customers.

**Location:** The premise where Improvements will be/are installed.

**Master Agreement:** Program agreement between ABAG and the Partner Utilities.

**Notice of Efficiency Charge:** The notice to be attached to the property records at the appropriate County Recorder's Office regarding obligations associated with the Program, including requirements to pay the On-Bill Charge.

**On-Bill Charge:** The regular monthly charge on a Program Participant's or Successor Customer's bill for recovery of Total On-Bill Cost associated with Program Improvements at the Participant's or Successor Customer's Location.

**Owner:** Individual or entity/agency that owns the Location.

**Participant:** Customer of record on the water utility account at a Location who signs the Participant Agreement.

**Participant Agreement:** An agreement between the Customer of record at a Location with installed Improvement, the Owner of that Location if different from the Customer, the Partner Utility, and the Program Operator as applicable that defines all Customer or Owner benefits and obligations under the Program.

**Partner Utility:** Utilities that have signed the program Master Agreement.

**Program:** Services provided in exchange for the On-Bill Charge, including site visits, installation of Improvements, and administration.

**Program Contractor:** A licensed, bonded contractor that is approved to provide Program Services and abides by the terms of the Contractor Agreement.

**Program Fees:** Fees based on Annual Percentage Rate (APR) calculation, such as Capital Fees, ABAG Administration Fees, and Utility Fees.

**Program Fees:** Fees based on Annual Percentage Rate (APR) calculation for Capital, ABAG Administration, and Utility Fees.

**Program Operator (Operator):** The third-party Program administrator.

**Project:** The installation of Improvements at a particular Location

**Project Costs:** Normal costs associated with a single Location for Improvement installation, including labor and material costs and project administration, costs for customer enrollment and quality assurance/quality control. Project Costs do not include Situational Expenses, such as Repair Expenses and DIY Re-inspection Expenses.

**Proposal Summary:** A project description provided by the Program Operator on the cost-effective analysis of Improvements at a given Location. The summary includes the Cost Recovery Period, number of proposed Improvements, and estimated savings.

**Re-inspection Expense:** Cost associated with failed inspections for DIY Participant Projects.

**Rental Notice for On-Bill Efficiency Improvements:** A notice from the owner to a Successor Customer renting a Location with an active On-Bill Charge of the Program regarding benefits and obligations, including requirements to pay the Program's On-Bill Charge.

**Repair Expense:** Cost associated with fixing installed Improvements within the Improvement's Cost Recover Period.

**SB 407 Compliance Report:** A compliance report provided to all potential Participants who receive a Site Visit or Participants installing Improvements stating a project's level of compliance with California Senate Bill 407.

**Site Visit:** A visit made by a Program Contractor to a multifamily or commercial location to assess opportunities to effectively install Improvements at the location in accordance with Program requirements and inform the development of a Proposal Summary.

**Site-Visit Expense:** A cost paid to the Program Contractor to compensate for performing a Site Visit to a multifamily or commercial location where the customer declines to participate, cancels, or chooses the DIY pathway. This expense is added as a one-time, single line item charge on the water bill and the customer will receive a complimentary SB407 Compliance Report.

**Situational Expenses:** Costs associated with the extension of a Participant's or Successor Customer's On-Bill Charge based on situational requirements, such as Repair or DIY Re-inspection.

**Successor Customer:** The new Partner Utility customer of record accepting water service at a Location during the Cost Recovery Period.

**Total On-Bill Cost:** The total Project Costs, Program Fees, and applicable Situational Expenses, including Site Visit Expenses, DIY Re-inspection Expenses, and Repair Expenses charged to a Location over the Cost Recovery Period.

**Utility Fee:** An optional percent charge on Project Costs paid to the Partner Utility to recover costs for supporting Program Services.

## Fees, Charges, and Expenses

Type of Fee	Amount	Detail
On-Bill Charge	Varies by Location	Fixed charge based on Project Costs, ABAG Administration Fee, Capital Fee, Utility Fee, and the Cost Recovery Period
Project Costs	Varies by Location	Varies based on number of Improvements, labor and material costs, quality assurance, contractor oversight, and permits
ABAG Administration Fee	1 percent of Project Costs	Services include dispute resolution, reporting, accounting, and Program expansion
Utility Fee (Optional)	Up to 2 percent of Project Costs	Fee is paid to the Utility based on number of projects completed in its jurisdiction each month
Capital Fee	2 percent of Project Costs	Services include acquiring and providing capital; cost of capital
Site Visit Expense	\$200 plus \$10 per unit	The expense for an on-site project assessment and SB407 Compliance Report; paid to the Program Contractor
Re-Inspection Expense	\$150 plus \$10 per unit	Cost per visit for failed quality assurance or quality control inspections; debited from amounts due to the Program Contractor or billed to DIY Participant
Repair Expense	\$150 per hour	Recovered by extending the Cost Recovery Period as long as Improvements are functioning

## Application

- 1.0 Eligibility:** Eligible on an optional and voluntary basis to Customers of the utility (Partner Utility) with accounts in good standing for 12 months, or the duration of their utility service if their account has been open less than 12 months, who request installation of water efficiency Improvements at their Location as an essential utility service.
- 2.0 Participation:** To be a Participant in the Program, a Customer must: (1) be pre-qualified by the Program Operator (Operator), (2) agree to pay On-Bill Charges as described in the table under Fee, Charges, and Expenses, (3) receive a Proposal Summary from the Program Operator, and (4) sign a Participant Agreement that defines Customer benefits and obligations.

- 2.1 Premise Ownership:** If the Participant is not the Owner of the premises, the Owner must sign and abide by the Owner Agreement.
- 2.2 Notice of Agreement:** The Owner must agree in writing as part of the Participant Agreement (if the Owner is the Customer) or Owner Agreement (if the Owner is not the Customer) to having a Notice of Agreement attached to their property records at the appropriate County Recorder's Office.
- 2.3 Notice for Leased Location:** If the Owner of a Location with installed Improvements leases the Location to a Successor Customer, Owner must notify the Successor Customer of Program benefits and obligations, including requirements of the Program's On-Bill Charge as described in Section 7, using a Rental Notice for On-Bill Efficiency Improvements. Failure to obtain Successor Customer's signature on the Rental Notice for On-Bill Efficiency Improvements prior to the Successor Customer taking occupancy will constitute the Owner's acceptance of consequential damages and permission for Successor Customer to break their lease or rental agreement without penalty. Owner must also include discussion of the obligation to pay the On-Bill Charge in the terms through which the Success Customer leases or licenses the premise.
- 2.4 Do-It-Yourself (DIY) Option:** Multifamily or Commercial Participants may choose to have their own staff or contractor install Program-approved Improvements at the Participant's expense while the upfront cost of Improvements is otherwise covered by the Program. Participants choosing the DIY Option must sign an Intent to Participate Form to notify the Operator of an intent to sign a Participant Agreement prior to any consideration of their participation. If the Participant chooses the DIY option, the Participant will pay the Site-Visit Expense as described in Section 3.4.
- 3.0 Proposal Summary:** Based on customer reported information and findings from the Site Visit as applicable for multifamily and commercial locations, the Program Operator shall perform a cost-effectiveness analysis and prepare a Proposal Summary to install Improvements identifying recommended upgrades to improve water efficiency and lower utility costs. Customers who receive a site visit from the Program Contractor and decline to participate in the Program will receive a one-time charge for the visit and receive a SB 407 Compliance Report as described in the table under Fees, Charges, and Expenses.
- 3.1 Incentive Payment:** The On-Bill Charge to install Improvements may be offset with a Partner Utility subsidy for Program participation that is less than or equal to the value of the Improvements to the Partner Utility or any rebate that is available to all Customers who install a specific Improvement.
- 3.2 Net Savings:** Improvements shall be limited to those where the annual On-Bill Charges are no greater than 80 percent of the estimated annual Participant utility bill savings based on current rates for water and sewer and other utility services (e.g., gas or electric).

- 3.3 Copay Option:** In order to qualify proposed Improvements that are not sufficiently cost effective to meet the requirements in Section 3.2, Participants may agree to pay an upfront payment, or copay, to the Program Contractor for the portion of the Project Cost that exceeds the maximum amount determined to meet Section 3.2 requirements. The Partner Utility will assume no responsibility for such copay payments to the Program Contractor.
- 3.4 Site-Visit Expense:** All Owners of multifamily or commercial premises who sign an Intent to Participate Form will be charged a Site-Visit Expense if they decline to sign a Participant Agreement to install any Improvements or opt to become DIY Participants after receiving a Site Visit from a Program Contractor and Proposal Summary that resulted in estimated immediate savings without co-pay.
- 3.5 Existing Buildings:** Projects that propose Improvements to existing buildings deemed unlikely to be habitable or to serve their intended purpose for the Partner Utility's Cost Recovery Period will not be approved unless other funding can pay for repairs needed to qualify the building for the Program (e.g., rotted floors, deteriorated plumbing distribution system). If a building is a manufactured home, to be eligible it must be built on a permanent foundation and fabricated after 1982, when comprehensive federal standards were approved.
- 4.0 Program Operator:** A Partner Utility will sign a Master Agreement with the Association of Bay Area Governments (ABAG). This agreement defines the Partner Utility's relationship to ABAG, which will provide the financing service, and the Program Operator, who will implement the Program.
- 5.0 Program Contractor:** Should the Participant decide to proceed with implementing the Proposal Summary, the Program Operator shall determine the appropriate monthly On-Bill Charge as described in Section 7.0. The Participant shall sign a Participant Agreement and may be appointed or select a contractor from the Program Operator's list of Program Contractors. Participants choosing the DIY option may not hire Program Contractors to install Improvements.
- 6.0 Project Close Out:** When installation of Improvements is completed, the Program Contractor shall notify the Program Operator in accordance with their Contractor Agreement. Following on-site or telephone inspection and approval of the Improvement's installation by the Partner Utility or the Program Operator, the Program Operator will arrange for Program Contractor payment. The Program Operator will notify DIY Participants of the status of project close out, quality control inspections, and when On-Bill Charges will be authorized within three days of receiving the invoice for Improvements. DIY Participants must notify the Program Operator when their staff or contractor has completed the installation of the Improvements or be subject to Section 7.1.

- 7.0 On-Bill Charge:** The Partner Utility will recover the cost for its investments, including any fees as allowed in this Schedule, through a monthly On-Bill Charge assigned to the Location where Improvements are installed and paid by Participants or Successor Customers occupying that Location until the Total On-Bill Cost has been recovered. On-Bill Charges will be set for a Cost Recovery Period not to exceed 80 percent of the estimated life of the Improvements or the length of a full parts and labor warranty, whichever is greater and in no case longer than ten years. If proposed Improvements are sufficiently cost effective such that they can meet the requirements of Section 3.2 with a shorter Cost Recovery Period, the Participant or Successor Customer may request a shorter period. The Total On-Bill Cost and Cost Recovery Period will be included in the Participant Agreement.
- 7.1 Cost Recovery:** For DIY Participants, the Partner Utility will begin billing On-Bill Charges 45 days after the Program Operator notifies the DIY Participant of receipt of the invoice for Improvements, regardless of whether the installation of those Improvements has been completed or approved. On-Bill Charges for all other Participants or Successor Customers will begin no sooner than 45 days after project close out approval by the Project Operator. The Partner Utility will bill and collect On-Bill Charges until cost recovery is complete, except in cases discussed in Section 8. Prepayment of unbilled charges will not be permitted to facilitate installed Improvements remaining and continuing to function at the Location for at least the Cost Recovery Period.
- 7.2 Ownership of Improvements:** The Partner Utility will retain ownership of the Improvements while On-Bill Charges are being billed at the Location where Improvements have been installed. At the termination of On-Bill Charges, ownership transfers to the Location owner.
- 7.3 Maintenance of Improvements:** Participants and building owners (if the building owner is not the water customer) agree by signing the Participant Agreement or the Owner Agreement to keep the Improvements in place for the Cost Recovery Period, maintain the Improvements per manufacturers' instructions, not damage the Improvements (or let Participants' or Owners' tenants, guests, or invitees damage them), and immediately report failure of any Improvements to the Operator or Partner Utility. If an Improvement fails, the Operator or Partner Utility shall determine the cause of failure and is responsible for repairing the Improvements in a timely manner as long as the Participant or owners' tenants, guests, or invitees did not damage the Improvements, in which case the Participant or Owner will reimburse the Partner Utility as described in Section 8.
- 7.4 Termination of On-Bill Charge:** Once the Partner Utility's Total On-Bill Cost for Improvements at a Location have been recovered, the On-Bill Charge shall no longer be billed, except as described in Section 8.
- 7.5 Vacancy:** If a Location at which Improvements have been installed becomes vacant for any reason and water service is disconnected, On-Bill Charges will be suspended until a Successor Customer takes occupancy. If an Owner maintains water service at the Location, the Owner will be billed On-Bill Charges on the water bill.



- 7.6 Extension of On-Bill Charge:** If the On-Bill Charge is reduced or suspended for any reason, the number of total monthly payments shall be extended as long as the Improvement is still functioning, until the total On-Bill Charges collected equal the Total On-Bill Cost for the Installation as described in Section 7, unless the Partner Utility waives remaining charges as described in Section 8.
- 7.7 Tied to the Location:** Until cost recovery for Improvements at a Location is complete or the Partner Utility waives remaining charges as described in Section 8, the terms of this schedule shall be binding on the Location and any Successor Customer who shall receive service at that Location.
- 7.8 Collections:** Without regard to any other state or utility rules or policies, the On-Bill Charge shall be considered as an essential part of the Participant's or Successor Customer's bill for water and or wastewater service, and the Partner Utility may pursue cost recovery according to all authorized collection practices and rate setting authorities, including but not limited to disconnection of service to the Location for non-payment of On-Bill Charges under the same provisions as for any other utility charges for essential services and cost recovery from all rate-payers. If service is disconnected for Participants or Successor Customers on pre-paid payment plans (e.g., low and moderate income), On-Bill Charges will be pro-rated by the day.
- 8.0 Repairs:** Should at any future time during the billing of On-Bill Charges the Program Operator or Partner Utility determine that the installed Improvements are no longer functioning as intended and that the Participant, Successor Customer, occupant, or building owner, did not damage or fail to maintain the Improvements in place, the Partner Utility shall reduce or suspend the On-Bill Charges until such time as the Program Operator and/or a Program Contractor can repair the Improvements. If the Improvement cannot be repaired or replaced cost effectively, the Partner Utility will waive remaining charges.

If the Partner Utility or Program Operator determines the Participant, Successor Customer, occupant, Owner, or Participant's, Successor Customer's, occupant's or Owner's tenants, invitees, or guests damaged or failed to maintain the Improvements in place as described in Section 7.3, it will seek to recover the Total On-Bill Cost associated with the Installation, including any fees, incentives paid to lower Project Costs, and legal fees. The On-Bill Charges will continue until Partner Utility cost recovery is complete.

## Exhibit B: Roles and Responsibilities: ABAG and Partner Utility

This Exhibit B identifies the roles, responsibilities, and other anticipated work that will be coordinated between the Association of Bay Area Governments and Partner Utilities participating in BayREN Water Upgrades Save (Program). In addition to Exhibit B, additional guidance for Program Operation is detailed in the Water Upgrades Save Program Manual (Program Manual). ABAG shall notify Partner Utility of any changes to the Program Manual at least 30 days before the change(s) goes into effect. If Partner Utility finds any conflict between either Exhibit B or the Program Manual and the Master Agreement executed between ABAG and the Partner Utility, including this Exhibit B, the Partner Utility should immediately notify ABAG for written clarification. In the event of any conflict, the current version of the executed Agreement shall rule.

### Background and Relationship of the Parties

ABAG will establish the Program funding mechanism, securing the up-front project capital and paying the Program Operator and Program Contractors for approved projects. ABAG's selected Program Operator, working through the Bay Area Regional Energy Network (BayREN) and member BayREN Agencies and associated staff, will operate and administer the Program.

Partner Utilities opting into the Program will allow eligible utility customers to voluntarily participate in the Program and receive Program approved water conservation project services from eligible Program Contractors. Partner Utilities place a line item On-Bill Charge on the participating Location's water bill until the Total On-Bill Costs associated with approved project services have been recovered. Partner Utility will pay ABAG for services rendered regardless of collections.

### Partner Utility Activities and Responsibilities

Partner Utilities will:

- **Allow eligible utility customers to voluntarily participate in the Program.** Participants receive Program-approved water conservation project services from eligible Program Contractors. However, DIY Participants receive such services from contractors selected by the DIY Participant.
- **Adopt a locally appropriate schedule of rates and fees (Schedule).** The adopted Schedule shall enable On-bill Collection as required for the Program. The Schedule must be formally adopted by the Utility and shall be documented in the same manner as the Utility does for their existing rates and fees. Prior to adoption, Partner Utility shall work with ABAG to ensure the Partner Utility's proposed Schedule sufficiently references or otherwise incorporates the terms included in Exhibit A (Model Schedule of Rates and Fees) of the Program's Master Agreement.
- **Agree that the timely and complete payment of the On-Bill Charge by a Participant or Successor Customer liable for the On-Bill Charge shall be a condition of receiving water service** from Utility, and Utility shall use its established collection policies and all rights and remedies provided by law to enforce payment and collection of the On-Bill Charge.

- **Implement and track Program line-item charges on bills and in their billing system.** Line-item charges will enable ABAG-reported on-bill repayment at participating Locations in accordance with the Utility’s adopted Fee Schedule. At a minimum the Partner Utility will be required to:
  - Create a line-item for the monthly on-bill project services charge and a second line-item for one-time charges, such as Situational Expenses.
  - Include a contact number on each water bill issued to the Customer at Project Locations where the Customer can obtain the amount of the On-Bill Charge, and a description of the Improvement for which the charge has been incurred.
  - Implement a “flagging” mechanism to ensure its staff can identify any Participant-occupied or Successor Customer-occupied Location with an On-Bill Charge.
  - Generate a Program welcome letter to communicate benefits and obligations to Successor Customers that is handed out or mailed when new service is requested.
  - Ensure Partner Utility billing and customer service staff have access to all available Program-related information regarding Program accounts at improved Locations, including:
    - The Improvements installed at the Location.
    - The On-Bill Charge in effect for Improvements installed at that Location.
    - The remaining number of payments at any time, including adjustments for suspensions, missed payments, and repairs.
    - Charges billed, payments made, and payments missed.
    - Contact information for the installing Program Contractor or DIY-related staff, BayREN, and the Program Operator.
  - Provide any party identified in the as the contact on a recorded Notice of Efficiency Charges requesting written payoff amount or verification of outstanding On-Bill Charges within seven days of the request.
  - Provide a Utility Payment Report to ABAG with the monthly repayment, which lists all Participant projects included in repayment sequentially by water account number, includes total Partner Utility draw on ABAG financing service funds, identifies funds paid to date, and remaining funds owed by the reporting period and year-to-date.
- **Attend program training.** Partner Utility staff involved with marketing, customer service, quality assurance/quality control, and utility billing associated with the Program will be required to attend a training offered by the Program Operator. Partner Utility staff will be apprised of basic program processes thus increasing their awareness of opportunities for additional marketing, contractor and customer participation, and resource efficiency.
- **Access the Program Customer Relationship Management (CRM) tool.** Each Partner Utility shall be provided a login to upload eligible customer lists and Utility Repayment Reports. Partner Utility will have access to Utility Fee information from the CRM.
- **Integrate billing system with the CRM.** Partner Utility will integrate their billing system with the CRM to push information regarding the last 12–24 months of water utility bills for potential Participants and state Program line-item charges for Locations participating in the Program.
- **Provide a list of Eligible Customers to the Program Operator.** To limit the number of one-off customer account verifications, Partner Utility will provide the Program Operator with a list of eligible customers sorted by winter usage twice a year. This list shall include appropriate customer details for the Program Operator to verify Participant eligibility, including customer service address and customer account number.

- **Provide Program Operator with applicable rate information.** For customer segments served by the Program, Partner Utility shall provide current water and sewer rate information to the Program Operator and notify Program Operator of changes to those rates at least thirty days before those changes go into effect.
- **Be invited to provide the Program Operator with a list of local contractors** registered to do business with the local jurisdiction (i.e., contractors with a local business license registered with the City in which the utility operates). Operator will include outreach to these contractors as best as possible based on City-provided contact information as part of Program Contractor recruitment efforts.
- **Place On-Bill Charges on participating Location's water bill** until Total On-Bill Cost (i.e., all costs associated with one project's approved Services) have been recovered. Total On-Bill Cost may include Project Fees and Situational Expenses, including Repair Expenses and Re-inspection expenses.
- **Shall hold moneys collected as an On-Bill Charge in trust** for the exclusive benefit of the persons entitled to the financing costs to be paid, directly or indirectly, from the efficiency charge and shall not lose their character as revenues of the authority because the local agency or its publicly owned utility possesses them.
- **Continue to operate its publicly owned utility system** to provide service to its customers.
- **Repay ABAG regardless of collections for approved costs.** Utility will collect the On-Bill Charge for the benefit and account of ABAG and, if applicable, the beneficiaries of the pledge of the On-Bill Charge, will and account for and remit these amounts to, or for the account of, ABAG. This shall include Program Operator-approved Project Costs, authorized Expenses, and the applicable Program Fee identified in the current executed version of Exhibit D: Total On-Bill Cost Detail:
  - Project Costs: Normal costs associated with a single Location for Improvement installation, including labor and material costs and project administration, costs for customer enrollment and quality assurance/quality control. Project Costs do not include Situational Expenses, such as Repair Expenses and DIY Re-inspection Expenses.
  - Additional Authorized Situational Expenses: In addition to Project Costs, authorized expenses. assigned to a Location may include Program Operator-approved expenses, including:
    - Site-Visit Expense: Cost associated with potential multifamily and commercial Participants that receive an initial site visit and Proposal Summary with a Participant Agreement and decline to complete a project with a Program Contractor.
    - Repair Expense: Cost associated with Program Contractors repairing installed improvements that have failed within the cost recovery period, provided failure is not caused by the customer.
  - Program Fee: Each Participant's or Successor Customer's Total On-Bill Costs will include a Program Fee assessed using an Annual Percentage Rate (APR) calculation based on the final approved Project Cost and the 80 percent rule (see Exhibit D: Total On-Bill Costs Detail) for estimated savings and the cost recovery period. The Program Fee includes:
    - Capital Fee: A percent charge on Project Costs due to ABAG to recover financing costs for sourcing and administering capital.

- **ABAG Administration Fee:** A percent charge on Project Costs paid to the Association for Bay Area Governments (ABAG) to support Program administration such as payment and accounting, expansion of services, dispute resolution, and reporting
- **Optional Utility Fee:** An optional percent charge on Project Costs paid to the Partner Utility to recover costs for supporting Program services. Maximum Utility Fee is 2 percent of Project Costs. A Utility Fee will result in a proportionally higher On-Bill Charge and Total Project Cost for Participants and Successor Customers.
- **Agree that in the event of default by the Utility in payment** of revenues arising with respect to the On-Bill Charge, ABAG, upon the application by the beneficiaries of ABAG's pledge for any bond repayment, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the On-Bill Charge, and the Utility shall comply with such order.
- **Delegate signing authority for the Participant Agreement and responsibility for filing program notices** to ABAG or its contractor to reduce the administrative burden on the Utility.
- **Provide all ongoing Participant and Successor Customer support** if this Agreement is terminated before the Cost Recovery Period at a Location ends, including:
  - Answer inquiries from all Participants and Successor Customers with questions about the Program and inquiries stemming from review of notices filed at the County Recorder Office.
  - Address any Participant or Successor Customer complaints about the quality or functionality of the Improvements, investigate the reason for any failures and organize replacement or repair within a reasonable timeframe, ensuring Program Contractors and/or suppliers make good on warranties and stop On-Bill Charges if Improvements fail and cannot be repaired.

Partner Utilities will have the right to:

- **Request a Utility Fee, capped at a percentage.** Partner Utilities may impose a Utility Fee capped at 2 percent of a customer's Program-approved Project Costs and assessed in each customer's On-Bill Charges. Utility Fees for completed projects will be paid by ABAG to Partner Utility in a lump sum, for Partner Utility customer projects completed in the previous month.
- **Limit Eligible Improvements.** Eligible Program Improvements will be approved for the Program and identified in the Program Manual. If the Partner Utility desires to limit the specific Eligible Improvements their customers may install through the Program, the Partner Utility shall do so using Exhibit C: Utility Program Profile. Once each year, on or before November 1, Partner Utility may request revisions to Exhibit C. If no revision is requested, the previous year's limits on Eligible Improvements, if any, will be retained.
- **Limit Eligible Customers.** Partner Utility will have the right to limit eligible customer classes and set criteria for eligible individual accounts. Such limitations can include the time period during which a customer's account is required to be in good standing to minimize perceived risk for the Partner Utility. Utility may also establish an annual cap by customer class on the total number of Participants or the aggregate value of approved Project Costs.

- **Prohibit the Do-it-Yourself (DIY) pathway participation.** The Partner Utility may prohibit a DIY pathway to multifamily and commercial class customers. This pathway allows multifamily and commercial customers to use the Program to source Eligible Program Improvements while using their own contractors or other labor resources to install the Improvements.
- **Identify other programs to promote to participants.** Promotion of other programs is allowed but the Partner Utility may not require participation in other programs as a prerequisite to participation in the Program.
- **Conduct additional Program marketing activities.** The Partner Utility may conduct additional marketing activities including developing referral lists and hosting outreach events. Additional marketing activities are subject to Program Operator and ABAG approval.
- **Prohibit select Program Contractors.** Partner Utility may notify Program Operator of any concerns with a Program Contractor and may request that a Program Contractor not be allowed to install Program Improvements in their service area.
- **Elect to conduct quality control for final inspections within their jurisdiction.** Consistent with discussion below regarding ABAG responsibilities for Quality Assurance and Quality Control (QA/QC) and specific QA/QC procedures and protocols detailed in the Program Manual, the Partner Utility may negotiate responsibilities to perform specific QA/QC services in place of the Program Operator and ABAG and be paid associated compensation.

## ABAG Activities and Responsibilities

ABAG, ABAG’s contractors, and/or BayREN agencies will:

- **Appoint and oversee a Program Operator.** The Program Operator shall support delivery and implementation of the Program by performing tasks and deliverables agreed upon between ABAG and BayREN Agency Staff.
- **Secure and provide capital for the Program.** Secure enough low-cost capital to cover all Project Costs, Site Visits, Situational Expenses, Repair Expenses, Re-installation Expenses, and Program Fees for the duration of a Partner Utility offering Program Services to new Participants or Successor Customers. The ABAG financing service will:
  - Review Program Operator invoices and issue monthly payments to the Program Operator, who will pay all Program Contractors.
  - Use Program-secured capital to pay Utility the approved optional Utility Fee that can be used to cover Program-related Utility costs (e.g., select marketing and QA/QC tasks; billing coordination).
  - Secure additional lines of credit, or other financing resource, from MTC on an annual basis as necessary to operate the Program.
- **Develop, maintain, and oversee Program-wide marketing, education, and outreach.** Provide branding and marketing guidelines, Program logo, style guide, a marketing plan, and marketing collateral in multiple languages. Develop outreach templates for use by the Program Operator, Partner Utility, and Program Contractors. Responsibilities include:
  - Secure and direct funding via the California Public Utilities Commission (CPUC), ABAG Administration Fee, or other grant funds for marketing activities by Program Operator and BayREN Agency staff.
  - Manage marketing campaigns in coordination with the Program Operator and its Program Contractors, Partner Utilities, and BayREN member agencies.

- Collaborate with Partner Utilities on marketing activities and support Partner Utilities with oversight to ensure alignment with branding and marketing guidelines.
- Maintain Partner Utility–provided lists of Customers with high water use and in target neighborhoods. Create Customer service protocols and scripts and maintain records of Customers who declined invitations to participate, who did not accept project proposals, and who participated in the Program, including answers to any Program survey questions.
- Respond to all Participant, Successor Customer, and contractor inquiries about the Program, including calls from potential Participants interested in and eligible for the Program. Program Operator will send referrals to the Program Contractors if Participant indicates a specific preference.
- Design and issue Participant satisfaction surveys. Request any follow-up survey questions and receive requested information from Participant in order to assist in evaluating the effectiveness of the Program.
- **Establish and maintain a CRM Project Tracking Tool** for Program Operator to assist in tasks, including:
  - Sales tracking: Marketing and lead management.
  - Contact management: Customer contact information, demographics, and interaction.
  - Project tracking: Number and type of projects, including project documentation and signed agreements, installation, and repayment status.
  - Reports and dashboards: Track data for monthly, quarterly, and annual CPUC reporting and ad-hoc CPUC Evaluation Measurement and Verification (EM&V) requests.
  - Program feedback: Participant, Successor Customer or Program Contractor feedback, complaints, and endorsements.
  - Savings results: Estimated water, sewer, and energy savings from current and completed projects.
  - Access: Establishing appropriate levels of access to the CRM for other parties, including Program Contractors and Partner Utilities, consistent with Program terms for customer privacy.
- **Identify improvements eligible for the Program:** Maintain a list of products eligible for the Program and vet and approve, as appropriate, requests from Participants, Successor Customers, or Program Contractors for new products to be added. In addition:
  - Supply competitively priced improvements. Negotiate pricing for select improvements with suppliers and oversee any procurement processes (e.g., Request for Proposals that consider price, flexibility, product warranties, and accessibility with pick-up and returns).
  - Provide Program Contractors and DIY Participants with instructions for access to bulk-priced items.
  - Ensure all store and product warranties are honored.
- **Manage Contractor enrollment and support.** Recruit contractors to the Program and respond to inquiries from interested contractors and other parties. This will include but is not limited to:
  - Recruit “Local Contractors” to the Program. Operator will use contact lists from California State Licensing Board, professional associations aligned with Program services, and as provided by the Partner Utility any list of locally registered and or licensed contractor businesses. As possible the Program maintains a “Local Contractor” goal of enrolling Program Contractors that would be considered as a

“Local Contractor,” defined as a business with a principal business office, or a satellite office with a least one full-time employee, located within the County where the Partner Utility provides customer service.

- Arrange for signature of Contractor Agreements, verify and maintain proof of Contractor license, insurance coverage, and bonding that protects Participants, Owners if different, Successor Customers, Partner Utilities, ABAG, and ABAG’s subcontractors including BayREN Agency Staff.
- Maintain records in a file for each Program Contractor and ensure all agreements, licenses, insurance, and bonding remain in force throughout the Program Contractor’s participation in the Program.
- Provide copies of these records to the Partner Utilities upon request.
- Train and certify Program Contractors, including training on best practices and how to adhere to Program standards.
- Maintain records of which Partner Utility service territories a Program Contractor operates within and facilitate Participant leads to Program Contractors based on the contractor’s operating territory and availability.
- **Facilitate installation of Program Improvements at Participant or Successor Customer Locations.** For Partner Utility Customers interested in participating in the Program, this shall include verifying all Participant Agreements are complete and signed, all required forms are complete and accurate (and signed if appropriate), and all data on forms and agreements is correct.
  - Pre-qualify new Participants, including the following checks:
    - Determine eligibility and the appropriate program pathway (e.g., single family, multifamily, commercial, DIY) and follow relevant intake process.
    - Request from the Partner Utility a record of the last 12–24 months of water utility bills for the applicant Location and place the record in Participant’s file.
    - Develop and finalize a project Proposal Summary.
    - Send Proposal Summary to Participant as part of the Participant Agreement and request a record of the last 12–24 months of electricity and natural gas utility bills
    - Assist Participant in selecting a Program Contractor and oversee all installations as described below.
    - Approve all project summaries (i.e., scope of work) prior to any work commencing.
    - Ensure Program calculations for projects meet the 80 Percent Rule.
    - Ensure Participants understand the Program and the basis for savings estimates.
    - Perform pre-installation quality control if required (see Program Manual).
  - Establish and issue requirements for on-going maintenance of improvements, and document procedures in Participant Agreement.
  - Notify Partner Utility to initiate billing the location-specific on-bill charge on the billing cycle minimally 45 days following approval of Program Contractor or DIY contractor’s installation.
  - File appropriate notices of on-bill charge at County Recorder Office, including:
    - No later than 10 days after funding an efficiency improvement, a notice of efficiency charge for the completed project.
    - Within 10 days of full repayment of the outstanding charges related to the recorded notice of efficiency charge, a notice of the full repayment and removal of the efficiency charge in the records of the county recorder.



- Within 10 days of any change in the servicing agent or entity responsible for the collection of the efficiency charge changes, a new notice of efficiency charge identifying the new agent or entity
- **Provide ongoing Participant and Successor Customer support** during provision of Program Operator services, including but not limited to:
  - Address any Participant or Successor Customer complaints about the quality or functionality of the improvements. Investigate the reason for any failures and organize replacement within a reasonable timeframe, ensuring Program Contractors and/or suppliers make good on warranties. Notify Partner Utility when to stop monthly on-bill chargers if improvements fail and cannot be repaired.
  - Answer inquiries from Successor Customers with questions about the Program and inquiries stemming from review of notices filed at the County Recorder Office.
- **Establish QA/QC requirements and provide oversight** of in-field and desktop QA/QC conducted by the Program Operator and/or the Utility. At ABAG’s discretion, it may choose to audit or conduct QA/QC activities performed by the Program Operator. Manage all installation quality assurance, including:
  - For improvements installed through the single-family pathway or standard multifamily/commercial pathway, these duties will be carried out through a site visit for a Program Contractor’s first completed project and a minimum 10 percent of that contractor’s total completed projects. The remaining post-installation inspections will be performed by phone with Participants and Successor Customers. The 10-percent minimum is subject to negotiation between the Utility and Program Operator, based on the final number of completed projects. For multifamily or commercial projects using the DIY pathway, the inspection rate is 100 percent for both pre- and post-on-site screening to confirm eligibility and to identify incorrect installations of qualifying Improvements. [NOTE: Re-inspection Expenses charged to Contractors whose work fails inspection will pay for as many inspections of Contractor’s work as necessary to facilitate a successful Program.]
  - Onsite inspection: Verify Program Contractor used the correct Program Improvements and installed them properly, the worksite was left “vacuum clean,” and all packaging and materials were removed.
  - Phone inspections: Program Operator may ask Participants or Successor Customers to take pictures or read identifying information from appliances, improvements, or warranty information and verify that Participant or Successor Customer has signed all project documentation.
  - Work with contractors to resolve any faults, such as failed installation, in accordance with the Contractor Agreement if applicable, and impose any required consequences including:
    - Not approve the contractor’s work.
    - Insist the contractor correct any deficiencies (if necessary, using contractor’s bonding to hire another contractor).
    - Deduct re-inspection expenses for each failed inspection from contractor’s payments (or from the bonding).
    - Arrange for independent third-party inspection of one or two other completed projects by this contractor.
    - Remove Program Contractors who do not follow Program requirements.
- **Establish and regularly evaluate dispute resolution processes** including mediation, conciliation, or negotiation between Program Contractors, the Program Operator, Partner

Utilities, and when necessary, Participants or Successor Customers in accordance with their respective agreements.

- **Issue reports, responses, filings, and other documentation** required for filing with the CPUC, PG&E, California Energy Commission, and any other agency for which filings are necessary or desired. This work includes, but is not limited to, the following:
  - Prepare monthly reports.
  - Work with BayREN staff to produce the Water Upgrades \$ave section of the Annual Report to the CPUC.
  - Provide analysis of Program data, and suggestions for improving both metrics and the Program, as well as information for metrics filings to the CPUC.
  - Assist with content for the Annual Budget Advice Letter as needed.
  - Support reporting tasks with technical calculations and documentation, particularly in formats customarily used in reporting to the CPUC.
- **Ongoing Program evaluation.** Use CRM Project Tracking Tool and Partner Utility, Participant, Successor Customer and Contractor feedback to evaluate the Program's effectiveness and efficiency and make adjustments to ensure ongoing Program success.

# Exhibit C: Utility Program Profile

Partner Utility shall complete this Exhibit and provide a signed copy as part of its final signed Master Agreement for Water Upgrades \$ave (Program) and shall provide a revised copy of this Exhibit to ABAG at least annually on or before November 1 unless requested otherwise below.

## Utility Information

Partner Utility has named the following representative as the main point of contact for the Program. In the event this representative changes, Partner Utility shall immediately provide ABAG with an alternate and current point of contact.

### UTILITY

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_

### UTILITY REPRESENTATIVE

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

### UTILITY GOVERNANCE

Utility is a:  Municipal department of a Charter City  
 Municipal department of a General Law City  
 A Special District

Date of governing agency's incorporation: [YEAR]

## Utility Customer Overview

Once each year on or before November 1, Partner Utility may request and or revise any existing annual cap for Program participation for the upcoming year. If no revision is requested, the previous year's cap, if any, will be retained.

### NUMBER OF SERVICE ACCOUNTS

Single Family: \_\_\_\_\_  
Multifamily: \_\_\_\_\_  
Commercial: \_\_\_\_\_

### ANNUAL PARTICIPATION CAP (if any)

	Number of Projects	or	Project Value
Single Family:	_____ none _____		_____ none _____
Multifamily:	_____ none _____		_____ none _____
Commercial:	_____ none _____		_____ none _____

## ABAG and Utility Reporting and Payment Schedule

Program Operator notifies ABAG and Partner Utility of approved total On-Bill Charges at all participating Locations for Month 1:	<u>1<sup>st</sup> business day, Month 2</u>
ABAG issues payments for Month 1 projects:	<u>TBD by ABAG</u>
Partner Utility assigns or updates Total On-Bill Costs and On-Bill Charges at participating locations approved for Month 1:	<u>1<sup>st</sup> business day, Month 3</u>
Partner Utility issues repayment to ABAG, including first charges for new participating Locations for Month 1:	<u>TBD by ABAG and Utility</u>

## Utility Signature

Authorized Partner  
Utility Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

## Exhibit D: Total On-Bill Cost Detail

Partner Utility shall complete this Exhibit and provide a signed copy as part of its final signed Master Agreement for Water Upgrades Save (the Program) and shall provide a revised copy of this Exhibit to ABAG at least annually on or before November 1 unless requested otherwise below.

The Program Operator will assess the Utility Fee identified in this Exhibit as part of the Program Fee for all projects completed and approved for Partner Utility's Participants and Successor Customers. Partner Utility may request a change in the assessed Utility Fee by submitting a revised version of this Exhibit to ABAG so long as any adjusted Utility Fee is also included in the Partner Utility's adopted Program Fee Schedule.

### Eligible Improvements

Improvements eligible for the Program must be estimated to be cost-effective under an 80 percent rule based on the formula below: the annual charge cannot exceed 80 percent of the estimated annual utility bill savings (water, sewer, natural gas, and/or electricity as appropriate) and the initial approved cost recovery period cannot exceed 80 percent of the useful life of the upgrade. This allows for the Cost Recovery Period to be extended to account for missed payments or Situational Expenses, such as Repair Expenses.

*Figure: The 80 Percent Rule Formula*

	annual water and sewer gallons saved x current water utility rates
+	annual electricity and natural gas units saved x current energy utility rates
*	80%
<hr/>	
=	Maximum on-bill charge

This involves a simple annual percentage rate (APR) calculation with the following primary variables: Project Cost (including costs associated with project oversight and permits, less any rebates), Program Fees, and the Cost Recovery Period of On-Bill Charges. The initial approved Cost Recovery Period is capped at ten years or 120 monthly billing cycles but can be reduced to any shorter period that meets the 80 percent rule.

Provided the annual On-Bill Charge is equal to or less than 80 percent of the estimated annual utility bill savings based on current utility rates, an Improvement can qualify for the Program with no upfront co-payment (copay). Improvements that do not deliver utility bill savings sufficient to meet the 80 percent rule may still be installed as part of the program if a Participant or their Partner Utility covers any required copay.

## Program Fee Components

The Partner Utility’s adopted Program Fee Schedule authorizes the following Fees. Once each year on or before November 1, Utility may request and or revise any existing Utility Fee for the upcoming year. If no revision is requested, the previous year’s Utility Fee, if any, will be retained.

Project Costs	Capital Fee	ABAG Administration Fee	Optional Utility Fee
Labor, materials, quality assurance, contractor oversight	Source capital, service administration	Administration services, reporting, expansion	Cost recovery options for utility administration

The Program’s Capital Fee is 2%  
 The Program’s ABAG Administration Fee is 1%  
 The Utility requests a Utility Fee\* of 2%  
*\* Maximum Utility Fee that can be requested is 2% and is set at Utility’s discretion. A higher Utility Fee will result in a proportionally higher On-Bill Charge and Total Project Cost for Participants.*

The total Program Fee each Participant will pay is the sum of the Capital, ABAG Administration, and Utility fees and will be assessed using an APR calculation based on the final approved total project cost and the 80 percent rule for estimated savings and cost recovery period.

## Additional Authorized Expenses

In addition to project costs and the program fee, Total On-Bill Costs assigned to a participating location may also include situational expenses that are authorized in the Partner Utility’s adopted Program Fee Schedule and approved by the Program. These expenses include:

- Site Visit Expense: Cost associated with potential multifamily and commercial participants that receive an initial site visit and decline to complete a project with a Program Contractor.
- Repair Expense: Cost associated with Program Contractors repairing installed Improvements that have failed within the cost recovery period, provided failure is not due to customer fault.

## Utility Signature

Utility Name: \_\_\_\_\_  
 City, State: \_\_\_\_\_  
 Date: \_\_\_\_\_

Utility Representative: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_

# Exhibit E: Utility Payment Report

Partner Utility shall complete and include the following report with its Monthly Utility Payment to the Association of Bay Area Governments (ABAG) for approved program projects completed at Partner Utility Participant or Successor Customer Locations.

## Utility Information

### UTILITY

Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 City, State: \_\_\_\_\_  
 Zip Code: \_\_\_\_\_

### POINT OF CONTACT

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_

## Utility Payment Details

Date Payment Issued: \_\_\_\_\_ Current Payment Amount: \_\_\_\_\_  
 Payment Due for Period: \_\_\_\_\_ Total Payment Due To-Date: \_\_\_\_\_  
 Period Covered: \_\_\_\_\_ Total Payment To-Date: \_\_\_\_\_

Fiscal Year 20XX	Current Period	Year to Date
Total accounts*		
Total draw		
Total payment		
Cash balance		

Attached is a Participant and Successor Customer list by sequential account number (see page 2).

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## For Internal ABAG Use (to be completed by ABAG Staff)

Date Payment Received: \_\_\_\_\_  
 Payment Equals Amount Due  \_\_\_\_\_  
 Payment Does Not Equal Amount Due  \_\_\_\_\_  
 Action Taken: \_\_\_\_\_  
 \_\_\_\_\_  
 Date of Action: \_\_\_\_\_

Template for Utility Payment Details Participant and Successor  
Customer List

Partner Utility [INSERT UTILITY NAME] Participating Accounts Report		
001-23456		
100-23457		
110-23000		



## **Exhibit F: Participant Agreements**

The Program's Participant Agreements as approved to form by the Association of Bay Area Governments and the Partner Utility executing this Master Agreement shall be maintained on the following website:

Single Family Participant Agreement: <https://rcpa.ca.gov/wp-content/uploads/2021/01/SingleFamily Participant Agmt 2020 0813.pdf>

Multifamily Participant Agreement: <https://rcpa.ca.gov/wp-content/uploads/2021/01/MultiFamily Participant Agmt 2020 0813.pdf>

# Water Upgrades Save Single Family Participant Agreement

Customer: \_\_\_\_\_ Account #: \_\_\_\_\_ Occupancy (*check one*):  
Address: \_\_\_\_\_ Meter ID #: \_\_\_\_\_  Building Owner  Renter  
\_\_\_\_\_ Telephone #: \_\_\_\_\_ Email: \_\_\_\_\_

**Program Operator:** Program Operator Name (870-XXX-XXX)

## 1 CUSTOMER UNDERSTANDING

- 1.1 I have read this Agreement including Attachments and understand the terms “Customer,” “I,” “We,” and “my” refer to myself, other occupants, or people I allow on the premise at the address above (Location). “Owner” shall refer to the owner of the premise at the Location.
- 1.2 I am a Customer of [**Partner Utility**] (Utility) or an Owner and request the Bay Area Regional Energy Network Program Water Upgrades Save (Program), as administered by the Association of Bay Area Governments (ABAG) and its subcontractors, to install the efficiency improvements (Improvements) identified in Attachment A at the Location. I intend to maintain and use these Improvements for their useful life.
- 1.3 I own the building at the above address, or the Owner has signed this Agreement below and agrees to terms as applicable.
- 1.4 I understand that the accuracy of estimated savings depends on the accuracy of the information I provide to the Program Contractor (Contractor) and/or the Program Operator (Operator). If information I provide is different from actual conditions (e.g., if there is an increase the number of occupants, increased water usage, or addition of new resource-using equipment, etc.), my savings will not be as estimated.
- 1.5 Savings estimates are based on current water, sewer, electric, and natural gas rates. If rates increase, the real value of my savings will be greater, but the total amount of my utility bills, while lower than it would be without these Improvements, may increase.
- 1.6 Signatories to this Agreement know of no existing conditions that would prevent the installation of Improvements at this Location.
- 1.7 I understand that the Operator is the primary contact for the Program and will retain confidential records on behalf of the Customer and Utility.

## 2 CUSTOMER AGREEMENTS

- 2.1 Access: I will allow Operator, Contractor(s), and Utility, and their authorized representatives, with 72-hours’ notice, to enter my home during normal business hours for assessment, installation, inspection, and repair of Improvements. If I am the Owner, I will provide any tenant on the premise with the legally required prior notice in order to allow Operator, Contractor(s), and Utility reasonable access to the premise.
- 2.2 On-bill Charges: I will pay all Utility On-bill Charges (Charges) as specified in this Agreement until Utility has recovered all of its costs (Cost Recovery Period), which shall not exceed the useful life of the Improvements, or until I no longer have this account and have fulfilled all my obligations described below. I will also pay any costs associated with repairs that are my responsibility as described in Item 2.4 below. I agree Utility may use its authorized collection practices, including disconnection for non-payment, to ensure payment obligations are met.

- 2.3 Maintenance: I will maintain the Improvement(s) and keep them in place. If I remove or modify an Improvement without Operator's or Utility's written permission, I will reimburse Utility for all remaining Total On-bill Costs and other costs as described in Item 5.4. I understand that I am responsible for any required maintenance, costs resulting from failure to properly maintain Improvement(s), and costs associated with damage to Improvements that I caused.
- 2.3.1 Landscape Improvements: Customer and Owner understand the program may remove existing turf and install water saving irrigation and control equipment as described in Attachment A. No plants are covered for warranty by Operator or Contractor and Customer and Owner are solely responsible for all plants irrigated by the system, including weeding, pruning, pest and disease control, soil fertility, or other activities required to maintain proper plant health. Customer and Owner agree to maintain the irrigation system, controls and related water supply lines.
- 2.3.2 All other Improvements: Customer and Owner are responsible for incidental maintenance such as routine cleaning and care of Improvements consistent with regular normal use and as needed per manufacturer's recommendations to maintain proper function and validity of any warranty. Customer and Owner are also responsible for the ancillary plumbing system, including water supply and sewer lines, and any water heating system related to hot water delivered by Improvements.
- 2.4 Repairs: I will notify Operator if any of the installed Improvements stop working. Operator will authorize repairs only after being notified and allowed to inspect failed Improvements.
- 2.4.1 My obligation to pay Charges for failed Improvements will stop if the Operator does not authorize and facilitate Improvement repair or replacement, or does not notify me that the Owner and/or I caused the failure or did not provide reasonable access as noted in Item 2.1. Once Operator facilitates repair and Improvements are working, Charges will again be due, and the Cost Recovery Period will be extended accordingly.
- 2.4.2 If Operator finds that the Owner and/or I caused the failure of an Improvement, Operator may authorize repairs and assign the costs to the responsible party. Regardless of whether repairs are made, Charges will continue until the Owner and/or I reimburse Utility for all remaining Total On-bill Costs and other costs as described in Item 5.4.
- 2.4.3 If Operator or Utility has any repair costs not covered by applicable warranty payments, Utility may extend the Cost Recovery Period accordingly.
- 2.4.4 In the event of destruction or damage to the building and installed Improvements (e.g., by earthquake or fire), if I am the Owner, I agree to replace or repair damaged Improvements with comparable Improvements approved by Operator. If Operator does not approve the restored Improvements, I will reimburse Utility for remaining Total On-bill Costs and other costs as described in Item 5.4.
- 2.4.5 Operator's finding of the cause of failure of an Improvement will be final and binding, and I will not pursue further action or otherwise challenge this decision.
- 2.5 Limitations on early payment: I understand Utility will not permit early payment of remaining unbilled Charges except as required in 5.4.
- 2.6 Acceptance of Program Contractor Work: If I do not agree with Operator's determination that Contractor's work is satisfactory, as indicated by my refusal to sign a Program Work Acceptance form, and if I want to initiate dispute resolution proceedings as described in Item 4 below, I agree that I must do so within 5 business days of onsite or telephonic final inspection. Otherwise, the Contractor will be paid, and my consent will not be necessary.
- 2.7 Notice to Tenants for On-Bill Charge: If I am the Owner, I agree to provide required notice to tenants regarding any obligation to pay the On-Bill Charge.
- 2.7.1 During the Cost Recovery Period, Owner will provide notice to any new tenants, before entering into a lease or rental agreement, of the benefits and obligations of the Improvements that apply to any Utility account opened at the Location. The new tenant's signature on the Efficiency Notice form (Attachment B) will be proof of this notice.

- 2.7.2 The Owner shall also ensure tenant's obligation to pay the On-Bill Charge appears in the terms through which the tenant leases or licenses the premise for occupancy. Failure to fulfill this requirement will constitute permission for the new tenant to break the lease or rental agreement within thirty (30) business days of receiving notice from Utility of the new tenant's rights, benefits, and obligations associated with Improvements and acceptance of any consequential damages relating to my failure to provide notice.
- 2.8 Surveys: I will make a good faith effort to provide requested information and to participate in follow-up surveys approved by Utility or Operator in order to assist in evaluating the Program.
- 2.9 Breach of Agreement: If Customer or Owner violates any of the terms of this Agreement, the violator will reimburse Operator and/or Utility for all remaining Total On-bill Cost and other costs as described in Item 5.4.

### **3 CUSTOMER AUTHORIZATIONS**

#### **3.1 Customer and Owner authorize:**

- 3.1.1 Utilities providing water, sewer, electricity, and natural gas service to the Location to release utility account information including account number, service identification, meter number, bill history, and usage data to the Operator to be held for confidential use by the Program.
- 3.1.2 Installation of the Improvements as shown in Attachment A. If the Operator has notified Customer that an upfront Copayment (Copay) to the Contractor is necessary to install these Improvements, Customer agrees to pay the Copay before work starts. In no event will any Copay be refunded by Utility or Operator.
- 3.1.3 Operator to coordinate with the Contractor and facilitate the installation of the Improvement(s) and related work, including arranging for any repair(s) or replacement(s) of Improvements that fail during the Cost Recovery Period.
- 3.1.4 Operator to forward change orders to Contractor so long as the change orders do not result in any increased Copay, and the Charge remains no more than 80% of estimated annual savings. Any change order that adds out-of-pocket costs must be agreed to in writing by Operator, Contractor, Customer, and Owner if different.
- 3.2 Program Charges: Customer authorizes Operator to instruct Utility to assign Charges to this Location's utility bills no sooner than 45 days after Operator's approval of all installed Improvements.
- 3.3 Notice of Program Charges: Customer and Owner authorize the Utility to record notice of the benefits and obligations of the installed Improvements with the property records for this Location.
- 3.4 Credits: Customer and Owner authorize Utility to claim all Efficiency and Carbon Credits arising from participation in this program.

### **4 DISPUTE RESOLUTION**

- 4.1 Any unresolved problem with the Contractor or the Operator not covered by this Agreement may be resolved by using the Program's alternative dispute resolution process or formal legal action. Both the Contractor and Operator have agreed to accept any decision from the Program's simple dispute resolution process. A description of the process is available online at \_\_\_\_\_ or from your Operator.

### **5 OTHER PROVISIONS**

- 5.1 Operator's Role: Operator will attempt to remedy any problems that arise out of work conducted per this Agreement. Operator is acting as a third-party administrator, and not as my agent, partner, or employee. This Agreement is not intended to and does not create a joint venture between the parties.
- 5.2 LIMITATION OF LIABILITY; INDEMNIFICATION: MANUFACTURERS ARE SOLELY RESPONSIBLE FOR THE DESIGN AND MANUFACTURE OF THEIR PRODUCT AND CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INSTALLATION OF THE IMPROVEMENTS AND THE CONDUCT OF CONTRACTOR'S STAFF AND SUBCONTRACTORS. NOTHING IN THIS AGREEMENT LIMITS

CUSTOMER’S OR OWNER’S RIGHTS REGARDING THE LIABILITY OF MANUFACTURERS, VENDORS OR CONTRACTOR FOR THE INSTALLED IMPROVEMENTS. CONTRACTOR IS NOT AN EMPLOYEE OR AGENT OF OPERATOR, ABAG OR ITS SUBCONTRACTORS, OR UTILITY. OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY ARE NOT GUARANTORS OF THE WORK PERFORMED BY THE CONTRACTOR OR OF THE INSTALLED IMPROVEMENTS. OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY WILL NOT BE LIABLE FOR, AND CUSTOMER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY AND THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES, EMPLOYEES, OFFICERS AND DIRECTORS, FROM AND AGAINST:

- 5.2.1 ANY DAMAGES RESULTING FROM FAULTY INSTALLATION, DESIGN, OR MANUFACTURING DEFECTS; OR
  - 5.2.2 PERSONAL INJURY, PROPERTY DAMAGE, ACTIONS, OR ILLEGAL ACTIVITY CAUSED BY CONTRACTOR OR CONTRACTOR'S AGENTS OR EMPLOYEES; OR
  - 5.2.3 FAULTY DESIGN OR MANUFACTURING DEFECT BY THE MANUFACTURER OF IMPROVEMENTS AND ANY CONSEQUENTIAL DAMAGES.
- 5.3 This Agreement shall remain in full force and effect until the On-bill Cost has been repaid in full or the Agreement is terminated by Operator or by mutual written consent of the parties.
- 5.4 Utility reimbursement required in 2.3, 2.4, and 2.9 means immediate payment for all remaining On-bill Costs and other costs related to this project, including litigation costs associated with this Agreement that may be incurred by Operator and/or Utility.
- 5.5 No waiver or change of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the parties to this Agreement.
- 5.6 All notices, requests, demands or other communications that are required or may be given under this Agreement shall be in writing and shall be given by confirmed email or by United States mail to the address specified below for the receiving party.
- 5.7 The provisions of this Agreement, including Exhibits A and B and any executed Change Order shall benefit and bind the successors and assigns of the parties to this Agreement. At the conclusion of Operator’s contractual services for Program, all of Operator’s rights and responsibilities will transfer to Utility. If any part of this Agreement shall be held invalid or ineffective, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement. This Agreement is governed by California law.

IN WITNESS WHEREOF, the Customer, Owner (if not the Customer), and Program Operator have all executed this Agreement as of the date.

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Customer Signature

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Owner (if not the Customer) Signature  
## Street Address  
City, CA Zip Code  
Phone  
Email

---

Program Operator Signature  
## Street Address  
City, CA Zip Code  
Phone  
Email

---

Date

## Attachment A Approved Efficiency Improvements

If Operator is not available to address Customer or Owner inquiries regarding these approved efficiency Improvements, please contact Utility at:

*[Utility Name; Utility Email/Phone]*

**Table 1. Customer and Contractor Information**

CUSTOMER Name:		
PROJECT Address:		
CUSTOMER #s:	Account #:	Meter #:
CUSTOMER Mailing Address:		
CUSTOMER Email:		
CUSTOMER Telephone:		
Onsite Contact:		
Contact Phone Number:		
CONTRACTOR Name:		
CONTRACTOR Business:		
CONTRACTOR Phone:		

**Table 2. Approved Improvements**

These Improvements were approved for installation by Program Operator on (date) _____.						
Improvement <i>e.g.:</i> <i>showerhead model/brand</i>	Installed Location <i>e.g.:</i> master bath	Installed Improvement Performance	Performance of Existing Fixture	Unit Cost Eligible for Program	Available Rebate	Total Cost Eligible for Efficiency Charge
The total of on-bill charges to be paid over the cost recovery period is \$_____ and includes Project costs of \$_____, a Capital Fee of \$_____, a Utility Fee of \$_____, and an ABAG Administration Fee of \$_____.						
Utility payment to Contractor: _____			Utility payment to program Supplier(s): _____			
Customer monthly On-bill Charge: _____			Customer copayment to Contractor: _____			
Estimated Utility Savings per month: _____			Estimated Cost Recovery Period (months): _____			
Estimated NET Savings per month: _____			Estimated Number of Billing Periods: _____			

**UNANTICIPATED CONDITIONS**

If prior to or during Improvement installation, Contractor finds pre-existing conditions which without remedy prevent installation of improvements, Contractor will issue a change order which must comply with 3.1.3 above and be approved by Program Operator.

## Attachment B Rental Notice for On-Bill Efficiency Improvements

Partner Utility installed resource efficiency upgrades in this building to make it less expensive to operate. For the utility to recover its costs, a program charge is included on this location's water bill. The estimated annual utility savings are significantly greater than the annual charges.

**Read below to understand what this means.**

Landlords should ask you to sign a copy of this form prior to signing a rental agreement for this premise and then send it to Operator to prove you received this notice.

Property Address: \_\_\_\_\_ Unit #: \_\_\_\_\_

Meter ID #: \_\_\_\_\_ Most Recent Member Account #: \_\_\_\_\_

The efficiency improvements (Improvements) installed in this location mean it will be less expensive to live here. Whoever pays the utility bills at this location will benefit from the savings and pay a charge on their water bills until your water utility recovers its costs for installing these Improvements. Your utility bill savings are estimated to be significantly greater than the charges. Depending on the Improvements installed, the resulting savings may reduce your water, sewer, electric, or gas bills.

If you decide to rent the premises with these lower utility bills, you acknowledge your water utility will require that you pay for these Improvements while you benefit from the savings, until you close the account, the Improvements stop working, or your water utility recovers all its costs, whichever comes first. Utility may use its authorized collection practices, including disconnection for non-payment, to ensure payment obligations are met. Pre-payment of unbilled charges is not permitted.

**What Kind of Savings Should I Expect?**

	Monthly Charge	Estimated Savings	Est. Net Savings
<b>Installed Upgrade(s) Total</b>			

If you want more information about utility bills at this location before buying or renting this premise, please call Operator at 1-807-\_\_\_ - \_\_\_ to learn about the:

- Specific Upgrades installed,
- Amount of the monthly charge on your bill and the estimated savings,
- Number of payments remaining, and
- Usage assumptions behind the estimated savings.

If upon taking occupancy at this location you find that the installed Improvements have been damaged or removed, please contact Utility at 1-807-\_\_\_ - \_\_\_ immediately to ensure you are not held liable for said damage or removal.

When you request water utility service, your utility will send you a form outlining the benefits of these Improvement(s) and your Program-related responsibilities. This form will describe the Improvements(s) installed, your estimated savings, and your responsibilities, including:

- Making regular payments,
- Not damaging or removing the installed Improvement(s),
- Servicing and maintaining the Improvements(s), and
- Reporting to your water utility if any Improvement(s) stops working.

My signature below indicates that I have read or have had this form read to me and that I understand its contents. I am signing this form before signing any rental agreement.

New Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

New Customer Name (print) \_\_\_\_\_



**FOR PROGRAM OPERATOR USE ONLY: CHANGE ORDER REVISION # \_\_\_\_\_ REQUESTED  
(DATE).**

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

### Water Upgrades Save Change Order

This Change Order is required to be completed if the Customer and/or Contractor requests changes to the Improvements identified in the original Agreement and those changes are approved by the Program Operator. If Operator is not available to address Customer or Owner inquiries regarding these approved efficiency Improvements, please contact Utility at:

*[Utility Name; Utility Email/Phone]*

**Table 1. Customer and Contractor Information**

CUSTOMER Name:	
PROJECT Service Address:	
CUSTOMER Account #s:	
CUSTOMER Mailing Address:	
CUSTOMER Email:	
CUSTOMER Telephone:	
Onsite Contact:	
Contact Phone Number:	
CONTRACTOR Name:	
CONTRACTOR Installer Name:	
CONTRACTOR Phone Number:	

**Table 2. Revised Program Improvements**

These Improvements were approved for installation by Program Operator on (date) _____.						
Improvement <i>e.g.:</i> <i>showerhead model/brand</i>	Installed Location <i>e.g.:</i> master bath	Installed Improvement Performance	Performance of Existing Fixture	Unit Cost Eligible for Program	Available Rebate	Total Cost Eligible for Efficiency Charge
The total of on-bill charges to be paid over the cost recovery period is \$ _____ and includes Project costs of \$ _____, a Capital Fee of \$ _____, a Utility Fee of \$ _____, and an ABAG Administration Fee of \$ _____.						
UTILITY PAYMENT to CONTRACTOR: _____			UTILITY PAYMENT to PROGRAM SUPPLIER(S): _____			
CUSTOMER MONTHLY EFFICIENCY CHARGE:			CUSTOMER CO-PAYMENT to CONTRACTOR:			
Estimated Utility Savings per month: _____			Cost Recovery Period (months): _____			
Estimated NET Savings per month: _____			Number of Billing Periods: _____			

**UNANTICIPATED CONDITIONS**

If prior to or during Improvement installation, Contractor identifies pre-existing conditions which, without remedy, would prevent the installation of Improvements, that must be noted here.

Pre-existing condition(s) preventing installation:
<input type="checkbox"/> Improvements not installed because:
<input type="checkbox"/> Improvements installed after Contractor:

**SIGNATURES**

Customer	_____	_____	_____
	Name	Signature	Date
Owner	_____	_____	_____
	Name	Signature	Date
Contractor	_____	_____	_____
	Name	Signature	Date
Program Operator	_____	_____	_____
	Name	Signature	Date

# Water Upgrades Save Multifamily Participant Agreement

Customer: \_\_\_\_\_ Account #: \_\_\_\_\_ Primary contact (*check one*):  
Address: \_\_\_\_\_ Meter ID #: \_\_\_\_\_  Owner  Manager  
\_\_\_\_\_ Telephone #: \_\_\_\_\_ Email: \_\_\_\_\_

Choice of Installer (*check one*):  Program contractor (see 2.4, 2.7 & 3.1 below)  
 Do-it-yourself (see 2.5, 2.8 & 3.2 below)

**Program Operator (Operator):** Program Operator Name (870-XXX-XXX)

## 1 CUSTOMER UNDERSTANDING

- 1.1 I have read this Agreement including Attachments and understand the terms “Customer,” “I,” “me,” and “my” refer to myself as well as the owner (if different), tenants, other occupants, or people allowed on the premise at the address above (Location). “Owner” shall refer to the owner of the premise served by Utility.
- 1.2 I am a Customer of [Partner Utility] (Utility) or an Owner and request the Bay Area Regional Energy Network program Water Upgrades Save (Program), as administered by the Association of Bay Area Governments (ABAG) and its subcontractors, to either install, using a Program Contractor (Contractor), the efficiency improvements (Improvements) identified in Attachment A at this Location or arrange for the efficiency improvement materials as identified in Attachment A to be made available to my installer for a Do-It-Yourself (DIY) installation at this Location. I understand that should I select a DIY installation I am solely responsible for overseeing and paying my installer. I intend to maintain and use these Improvements for their useful life.
- 1.3 I own the building at the above address, or the Owner has signed this Agreement below.
- 1.4 I understand that the accuracy of estimated savings depends on the accuracy of the information I provide to the Program Operator (Operator). If information I provide is different from actual conditions (e.g., if there is an increase the number of occupants, increased water usage, or addition of new resource-using equipment, etc.), my savings will not be as estimated.
- 1.5 Savings estimates are based on current water, sewer, electric, and natural gas volumetric rates. If those rates increase, the real value of my savings will be greater, but the total amount of my utility bills, while lower than it would be without these Improvements, may increase.
- 1.6 I know of no existing conditions that would prevent the installation of Improvements at this Location.
- 1.7 I understand that the Operator is the primary contact for the Program and will retain confidential records on behalf of the Customer and Utility.

## 2 CUSTOMER AGREEMENTS

- 2.1 Access: I will allow Operator, Contractor(s), Utility, and their authorized representatives, with 72-hour notice, to enter this Location during normal business hours for assessment, installation, inspection, and repair of Improvements. If I am the Owner, I will provide any tenant on the premise with the legally required prior notice in order to allow Operator, Contractor(s), and Utility reasonable access to the premise.
- 2.2 On-bill Charges: I will pay all Utility On-bill Charges (Charges) as specified in this Agreement until Utility has recovered all of its costs (Cost Recovery Period), which shall not exceed the useful life of the Improvements, or until I no longer have this account and have fulfilled all my obligations described below. I will also pay any

costs associated with repairs that are my responsibility as described in Item 2.4 below if Improvements are installed by a Program Contractor or as described in Item 2.5 below if Improvements are installed by my Do-It-Yourself installer. I agree Utility may use its authorized collection practices, including disconnection for non-payment, to ensure payment obligations are met.

- 2.3 Maintenance: I will maintain the Improvement(s) and keep them in place. If I remove or modify an Improvement without Operator's or Utility's written permission, I will reimburse Utility for all remaining Total On-bill Costs and other costs as described in Item 5.4. I understand that I am responsible for any required maintenance, costs resulting from failure to properly maintain Improvement(s), and costs associated with damage to Improvements that I caused.
- 2.3.1 Landscape Improvements: Customer and Owner understand the program may remove existing turf and install water saving irrigation and control equipment as described in Attachment A. No plants are covered for warranty by Operator or Contractor and Customer and Owner are solely responsible for all plants irrigated by the system, including weeding, pruning, pest and disease control, soil fertility, or other activities required to maintain proper plant health. Customer and Owner agree to maintain the irrigation system, controls and related water supply lines.
- 2.3.2 All other Improvements: Customer and Owner are responsible for incidental maintenance such as routine cleaning and care of Improvements consistent with regular normal use and as needed per manufacturer's recommendations to maintain proper function and validity of any warranty. Customer and Owner are also responsible for the ancillary plumbing system, including water supply and sewer lines, and any water heating system related to hot water delivered by Improvements.
- 2.4 Repairs for Program Contractor installed Improvements: I will notify Operator if any of the installed Improvements stop working. Operator will authorize repairs only after being notified and allowed to inspect failed Improvements.
- 2.4.1 My obligation to pay Charges for failed Improvements will stop if the Operator does not authorize and facilitate Improvement repair or replacement, or does not notify me that the Owner and/or I caused the failure or did not provide reasonable access as noted in Item 2.1. Once Operator facilitates repair and Improvements are working, Charges will again be due and the Cost Recovery Period will be extended accordingly.
- 2.4.2 If Operator finds that Owner and/or I caused the failure of an Improvement, Operator may authorize repairs and assign the costs to the responsible party. Regardless of whether repairs are made, Charges will continue until the Owner and/or I reimburse Utility for all remaining Total On-bill Costs and other costs as described in Item 5.4.
- 2.4.3 If Operator or the Utility has any repair costs not covered by applicable warranty payments, Utility may extend the Cost Recovery Period accordingly.
- 2.4.4 Operator's finding of the cause of failure of an Improvement will be final and binding, and I will not pursue further action or otherwise challenge this decision.
- 2.5 Repairs for Do-It-Yourself Contractor Installed Improvements: If I am using my own contractor or in-house installer (Do-It-Yourself or DIY Contractor) instead of a Program Contractor to install these Improvements, I will notify Operator if any of the installed Improvements stop working. Operator will support warranty claims as requested and only after being notified and allowed to inspect failed Improvements.
- 2.5.1 Operator will call manufacture of failed Improvements still under warranty, support Customer by requesting delivery of eligible replacement Improvements to the location specified by Customer and confirm with Customer the details of the manufacturer's delivery.

- 2.5.2 Customer will still be required to pay the On-Bill Charges if Improvements fail, regardless of whether they can be repaired.
- 2.6 In the event of destruction or damage to the building and installed Improvements (e.g., by earthquake or fire), if I am the Owner, I agree to replace or repair damaged Improvements with comparable Improvements approved by Operator. If Operator does not approve the restored Improvements, I will reimburse Utility for remaining Total On-bill Costs and other costs as described in Item 5.4.
- 2.7 Limitations on early payment: I understand Utility will not permit early payment of remaining unbilled Charges except as required in 2.4, 2.7 and 5.4.
- 2.8 Acceptance of Program Contractor Work: If I am using a Program Contractor and do not agree with Operator's determination that Contractor's work is satisfactory, as indicated by my refusal to sign a Program Work Acceptance form, and if I want to initiate dispute resolution proceedings as described in Item 4 below, I agree that I must do so within 5 business days of onsite or telephone final inspection. Otherwise, the Contractor will be paid, and my consent will not be necessary.
- 2.9 DIY Inspection: If I select a DIY Contractor instead of a Program Contractor to install these Improvements, I understand that the Operator will inspect the completed installation. If Operator determines that the Improvements were not properly installed, I will take the corrective action required by the Operator for the On-Bill Charges to be authorized. If I fail to take those corrective actions and request re-inspection within 21 days of notice from the Operator, I will be obligated to reimburse Utility for Total On-bill Costs, costs for failed DIY inspections, and other costs as described in Item 5.4.
- 2.10 Notice to Tenants for On-Bill Charge: If I am the Owner and tenants receive individual water bills from Utility, I shall ensure tenant's obligation to pay the On-Bill Charge appears in the terms through which the tenant leases or licenses the premise for occupancy. Failure to fulfill this requirement will constitute permission for the new tenant to break the lease or rental agreement within thirty (30) business days of receiving notice from Utility of the new tenant's rights, benefits, and obligations associated with Improvements and acceptance of any consequential damages relating to my failure to provide notice.
- 2.11 Surveys: I will make a good faith effort to provide requested information and to participate in follow-up surveys approved by Utility or Operator in order to assist in evaluating the Program.
- 2.12 Breach of Agreement: If Customer or Owner violates any of the terms of this Agreement, the violator will reimburse Operator and/or Utility for all remaining Total On-bill Cost and other costs as described in Item 5.4.

### **3 CUSTOMER AUTHORIZATIONS**

- 3.1 Utility account information: Customer and Owner authorize Utilities providing water, sewer, electricity, and natural gas service to the Location to release utility account information including account number, service identification, meter number, bill history, and usage data to the Operator to be held for confidential use by the Program.
- 3.2 With Program Contractor: Customer and Owner authorize:
- 3.2.1 Installation of the Improvements as shown in Attachment A. If the Operator has notified Customer that an upfront Copayment (Copay) to the Contractor is necessary to install these Improvements, Customer agrees to pay the Copay before work starts. In no event will any Copay be refunded by Utility or Operator
- 3.2.2 Operator to coordinate with the Contractor and facilitate the installation of the Improvement(s) and related work, including arranging for any repair(s) or replacement(s) of Improvements that fail during the Cost Recovery Period.
- 3.2.3 Operator to forward Change Orders to Contractor so long as the Change Orders do not result in any increased Copay, and the Charge remains no more than 80% of estimated annual savings. Any Change

Order that adds out-of-pocket costs must be agreed to in writing by Operator, Contractor, Customer, and Owner if different.

- 3.3 With a DIY Contractor: Customer and Owner authorize Operator to arrange for eligible improvement materials to be made available to my chosen installer.
- 3.4 Program Charges: Customer authorizes Operator to instruct Utility to assign Charges to this Location's utility bills no sooner than 45 days after Operator's approval of all installed Improvements.
- 3.5 Notice of Program Charges: Customer and Owner authorize the Utility to record notice of the benefits and obligations of the installed Improvements with the property records for this Location.
- 3.6 Credits: Customer and Owner authorize Utility to claim all Efficiency and Carbon Credits arising from my participation in this program.

#### **4 DISPUTE RESOLUTION**

Any unresolved problem with a Program Contractor or the Operator not covered by this Agreement may be resolved by using the Program's alternative dispute resolution process or formal legal action. Both Program Contractors and Operator have agreed to accept any decision from the Program's simple dispute resolution process. Only the Customer or the Owner may invoke the alternative dispute resolution process. A description of the process is available online at \_\_\_\_\_ or from the Operator.

#### **5 OTHER PROVISIONS**

- 5.1 Operator's Role: Operator will attempt to remedy any problems that arise out of work conducted per this Agreement. Operator is acting as a third-party administrator, and not as my agent, partner, or employee. This Agreement is not intended to and does not create a joint venture between the parties.
- 5.2 LIMITATION OF LIABILITY; INDEMNIFICATION: MANUFACTURERS ARE SOLELY RESPONSIBLE FOR THE DESIGN AND MANUFACTURE OF THEIR PRODUCT AND PROGRAM CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INSTALLATION OF THE IMPROVEMENTS AND THE CONDUCT OF CONTRACTOR'S STAFF AND SUBCONTRACTORS. CUSTOMERS WHO CHOOSE THE DIY OPTION ARE RESPONSIBLE FOR THEIR CHOICE OF INSTALLER AND THEIR INSTALLATION AND CONDUCT. NOTHING IN THIS AGREEMENT LIMITS CUSTOMER'S OR OWNER'S RIGHTS REGARDING THE LIABILITY OF MANUFACTURERS, VENDORS OR CONTRACTOR FOR THE INSTALLED IMPROVEMENTS. PROGRAM CONTRACTOR IS NOT AN EMPLOYEE OR AGENT OF OPERATOR, ABAG OR ITS SUBCONTRACTORS, OR UTILITY. OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY ARE NOT GUARANTORS OF THE WORK PERFORMED BY THE PROGRAM CONTRACTOR OR OF THE INSTALLED IMPROVEMENTS. OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY WILL NOT BE LIABLE FOR, AND CUSTOMER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS OPERATOR, ABAG AND ITS SUBCONTRACTORS, AND UTILITY AND THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES, EMPLOYEES, OFFICERS AND DIRECTORS, FROM AND AGAINST:
  - 5.2.1 ANY DAMAGES RESULTING FROM FAULTY INSTALLATION, DESIGN, OR MANUFACTURING DEFECTS; OR
  - 5.2.2 PERSONAL INJURY, PROPERTY DAMAGE, ACTIONS, OR ILLEGAL ACTIVITY CAUSED BY PROGRAM CONTRACTOR OR PROGRAM CONTRACTOR'S AGENTS OR EMPLOYEES; OR
  - 5.2.3 FAULTY DESIGN OR MANUFACTURING DEFECT BY THE MANUFACTURER OF IMPROVEMENTS AND ANY CONSEQUENTIAL DAMAGES.
- 5.3 This Agreement shall remain in full force and effect until the On-bill Cost has been repaid in full or the Agreement is terminated by Operator or by mutual written consent of the parties.

- 5.4 Utility reimbursement required in 2.3, 2.4, 2.9, and 2.12 means payment for all remaining On-bill Costs and other costs related to this project, including litigation costs associated with this Agreement that may be incurred by Operator and/or Utility.
- 5.5 No waiver or change of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the parties to this Agreement.
- 5.6 All notices, requests, demands or other communications that are required or may be given under this Agreement shall be in writing and shall be given by confirmed email or by United States mail to the address specified below for the receiving party.
- 5.7 The provisions of this Agreement, including Attachment A and any executed Change Order shall benefit and bind the successors and assigns of the parties to this Agreement. At the conclusion of Operator’s contractual services for Program, all of Operator’s rights and responsibilities will transfer to Utility. If any part of this Agreement shall be held invalid or ineffective, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement. This Agreement is governed by California law.

IN WITNESS WHEREOF, the Customer/Owner, their Representative, if applicable, and Program Operator have all executed this Agreement as of the date.

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Customer Signature

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Customer Title

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Owner (if not the Customer) Signature

## Street Address

City, CA Zip Code

Phone

Email

---

Program Operator Signature

## Street Address

City, CA Zip Code

Phone

Email

---

Date

## Attachment A Approved Efficiency Improvements

If Operator is not available to address Customer/Owner's or their representative's inquiries regarding these approved efficiency Improvements, please contact Utility at:

*[Utility Name; Utility Email/Phone]*

**Table 1. Customer and Contractor Information**

CUSTOMER Name:	
PROJECT Address:	
CUSTOMER #s:	Account #: _____ Meter #: _____
CUSTOMER Mailing Address:	
CUSTOMER Email:	
CUSTOMER Telephone:	
Onsite Contact:	
Contact Phone Number:	
CONTRACTOR Name:	
CONTRACTOR Business:	
CONTRACTOR Phone:	

**Table 2. Approved Improvements**

These Improvements were approved for installation by Program Operator on (date) _____.						
Improvement <i>e.g.:</i> <i>showerhead model/brand</i>	Installed Location <i>e.g.:</i> master bath	Installed Improvement Performance	Performance of Existing Fixture	Unit Cost Eligible for Program	Available Rebate	Total Cost Eligible for Efficiency Charge
The total of on-bill charges to be paid over the cost recovery period is \$ _____ and includes Materials and installation cost of \$ _____, Materials only cost of \$ _____, a Program Fee of \$ _____, a Utility Fee of \$ _____, and an ABAG Administration Fee of \$ _____.						
Utility payment to Contractor: _____			Utility payment to program Supplier(s): _____			
Customer monthly On-bill Charge: _____			Customer copayment to Contractor: _____			
Estimated Utility Savings per month: _____			Estimated Cost Recovery Period (months): _____			
Estimated NET Savings per month: _____			Estimated Number of Billing Periods: _____			

**UNANTICIPATED CONDITIONS**

If prior to or during Improvement installation, Contractor finds pre-existing conditions which without remedy prevent installation of improvements, Contractor will request a Change Order which must comply with 3.1.3 above and be approved by Program Operator.



<b>FOR PROGRAM OPERATOR USE ONLY: CHANGE ORDER REVISION # _____ REQUESTED (DATE).</b>		
_____	_____	_____
Name	Signature	Date

### Water Upgrades Save Change Order

This Change Order is required to be completed if the Customer and/or Contractor requests changes to the Improvements identified in the original Agreement and those changes are approved by the Program Operator. If Operator is not available to address Customer or Owner inquiries regarding these approved efficiency Improvements, please contact Utility at:

*[Utility Name; Utility Email/Phone]*

**Table 1. Customer and Contractor Information**

CUSTOMER Name:	
PROJECT Service Address:	
CUSTOMER Account #s:	
CUSTOMER Mailing Address:	
CUSTOMER Email:	
CUSTOMER Telephone:	
Onsite Contact:	
Contact Phone Number:	
CONTRACTOR Name:	
CONTRACTOR Installer Name:	
CONTRACTOR Phone Number:	

**Table 2. Revised Program Improvements**

These Improvements were approved for installation by Program Operator on (date) _____.						
Improvement <i>e.g.:</i> <i>showerhead model/brand</i>	Installed Location <i>e.g.:</i> master bath	Installed Improvement Performance	Performance of Existing Fixture	Unit Cost Eligible for Program	Available Rebate	Total Cost Eligible for Efficiency Charge
The total of on-bill charges to be paid over the cost recovery period is \$ _____ and includes Improvement costs of \$ _____, a Program Operator charge of \$ _____, a Utility Fee of \$ _____, and a Program administration charge of \$ _____.						
UTILITY PAYMENT to CONTRACTOR: _____				UTILITY PAYMENT to PROGRAM SUPPLIER(S):		
CUSTOMER MONTHLY EFFICIENCY CHARGE:				CUSTOMER CO-PAYMENT to CONTRACTOR:		

Estimated Utility Savings per month: _____	Cost Recovery Period (months): _____
Estimated NET Savings per month: _____	Number of Billing Periods: _____

**UNANTICIPATED CONDITIONS**

If prior to or during Improvement installation, Contractor identifies pre-existing conditions which, without remedy, would prevent the installation of Improvements, that must be noted here.

Pre-existing condition(s) preventing installation:
<input type="checkbox"/> Improvements not installed because:
<input type="checkbox"/> Improvements installed after Contractor:

**SIGNATURES**

Customer	_____	_____	_____
	Name	Signature	Date
Owner	_____	_____	_____
	Name	Signature	Date
Contractor	_____	_____	_____
	Name	Signature	Date
Program Operator	_____	_____	_____
	Name	Signature	Date

## Exhibit G: Program Operator Scope of Services

The most current version of the Program Operator Scope of Services is provided below for internal reviews. Versions of this exhibit that would be tied to an executed version of the Master Agreement should be on file on the website: [https://rcpa.ca.gov/wp-content/uploads/2021/01/OperatorScopeOfServices\\_2020\\_0813.pdf](https://rcpa.ca.gov/wp-content/uploads/2021/01/OperatorScopeOfServices_2020_0813.pdf)

Note: This Program Operator Scope of Services will be included as an Exhibit to the agreement between the selected vendor and the Sonoma County Regional Climate Protection Authority (RCPA), the Association of Bay Area Governments' (ABAG) contracted Bay Area Regional Energy Network (BayREN) member agency that is leading implementation of Water Upgrades \$ave.

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\_\_\_\_\_ will serve as the initial Program Operator (Operator) for the Sonoma County Regional Climate Protection Authority and Association of Bay Area Governments' (ABAG) program Water Upgrades \$ave (Program) and will be the Operator for all Program activity for the term of this Agreement.

This Scope of Services identifies the roles, responsibilities, and other anticipated work that will be performed by the Operator. In addition to this Scope of Services, additional guidance for Program operation is detailed in the Water Upgrades \$ave Program Manual (Program Manual). RCPA will notify Operator of any changes to the Program Manual at least 30 days before the change(s) goes into effect. If Operator finds any conflict between either this Agreement and Scope of Services and the Program Manual, the Operator will immediately notify RCPA for written clarification.

### PROGRAM OBJECTIVE

The program objective is to make water conservation easy with an inclusive financing on-bill offer that eligible utility customers accept and trust. Between 2020 and 2025, the program aims to enroll 16 water utilities and install projects at over 8,600 single family properties and in 2,580 multifamily units.

Operator will be responsible for daily implementation of the Program. This includes services to meet the following individual objectives:

- Work in partnership with RCPA, the Association of Bay Area Governments, and Partner Utilities as appropriate to finalize Water Upgrades \$ave protocols and processes to ensure the success of the Program for all parties, including most critically water customers.
- Outreach and engagement with potential Participants that results in signed Participant Agreements and completed projects.
- Ensure Improvements installed at Participants' properties are appropriate, cost effective, and correctly installed.
- Ensure paperwork and data are complete, accurate, and available in real time.

- Provide excellent Customer Service.

The list of Operator duties itemized below are explained in more detail in the Program Manual. Documents, tools, and forms referenced in this Scope of Services may also be included with the Program’s Master Agreement, Participant Agreements, and or Contractor Agreement.

On behalf of ABAG, the RCPA will oversee Operator activities.

## **PROGRAM RESOURCES**

The Program will provide the Program brand, marketing plan, and outreach materials. For the initial two Partner Utilities, Program will also provide initial Contractor recruitment activities to secure engagement with at least two contractors per Partner Utility territory ready to commit to the Contractor Scope of Work (attached as Exhibit F) drafted by the Program and engage with the Program Operator on negotiation and signature of the Contractor Agreement finalized by the Operator.

## **TASK A: PROGRAM OPERATOR ONBOARDING**

The Operator staff will:

- Attend trainings for Program marketing, Customer Relationship Management (CRM) platform, Contractor training, Utility customer service staff training (i.e., for all staff who may be called by program participants and possible participants), and Program reporting.
- Identify and communicate any concerns for performing or enforcing the Operator’s scope of work and the requirements of the Program Manual, Participant Agreements, and Contractor Agreement. Recommend suggestions for concerns raised and work with RCPA and ABAG to resolve within bid price.
- Confirm access to and ability to use CRM to submit sample projects for payment. Confirm alignment with and ability to follow data security protocols.
- Work with RCPA to approve to form the Contractor Agreement template the Operator will be executing with Contractors.
- Sign and execute Contractor Agreements with at least two Program Contractors for Program launch with each Partner Utility.
- As required based on location of Partner Utilities, establish purchasing account at local distributor(s) or retailer(s) for multifamily Participants pursuing the Do-It-Yourself Pathway.

## **Deliverables**

- Written memo identifying any concerns, and for identified concerns suggestions for resolution, for performing or enforcing the Operator’s scope of work and the requirements of the Program Manual, Participant Agreements, and Contractor Agreement.
- Two rounds of Sample Project data submitted through the CRM.
- Two Contractor Agreements executed prior to launch of Program at each Partner Utility.
- Purchasing account at local distributor/retailers appropriate for location of Partner Utilities.
- Miscellaneous set up needs and documents identified by the Operator and RCPA as necessary to support all Tasks B-F (including but not limited to scripts for

Customer/Participant calls, email and communication templates, and internal protocols and processes)

## **TASK B: MARKETING AND CUSTOMER SERVICE**

The Operator will handle the majority of customer outreach and engagement activities for the Program and approve any Program Contractor marketing to ensure clear communication with potential Customers, provide accurate information, and facilitate installation of Improvements. The purpose of the Operator's engagement with Customers is to ultimately secure signed Participant Agreements and completed projects. BayREN and Partner Utility marketing and outreach activities are intended to drive customers to express interest as warm leads ("Customer Interest") for Operator engagement. Operator is also allowed and encouraged to use RCPA-approved strategies to develop its own leads from Partner Utility provided Eligible Customer and High User lists. Operator staff will field all Customer Interest inquiries, responding within at least one business day; resolve issues in a timely and professional manner; and be available by phone and email.

The Operator will:

- Maintain branding and styling guidelines and approve marketing materials in accordance with the Program's branding and style protocols and guidelines to ensure brand and style consistency.
- Support implementation of any public marketing campaigns including work with BayREN and its consultants and partners to define goals, identify outreach channels, and implement marketing activities as approved.
- Respond to all contractor inquiries about the Program. Depending on Contractor interest, the Operator may send the Contractor a Program brochure and FAQ or schedule another call.
- Complete CRM record for all contractor inquiries.
- Perform Customer Intake by responding to all Customer Interest inquiries about the Program. Explain benefits of Program. Depending on Customer interest, the Operator may send the Customer a Program brochure and FAQ or schedule another call. For Customers interested in proceeding with Program, confirm with customer the name of the customer of record and property owner if different and best point of contact.
- Complete CRM record of Customer Intake for all interested Customers.
- Use bi-annual Customer lists provided by Partner Utilities and follow up communications with Utilities as necessary to verify Customers are eligible for the Program and assign a Program Contractor or provide them a list of Program Contractors as requested.
- Support the designing of Participant satisfaction surveys and issuing surveys to participants as requested by the Partner Utility or RCPA (survey needs may be streamlined into the post-installation phone verifications in Task E2 consistent with discussions with RCPA).

Deliverables

- Participation in RCPA-directed efforts to finalize and provide ongoing consultation on the marketing plans and collateral/campaigns for the overall Program and at individual Partner Utilities.
- Response to Customer Interest/warm leads from Program within 1 business day.

- Records for RCPA-approved strategies for optional Operator initiated efforts to develop its own leads of interested customers.
- Supporting Participant satisfaction surveys, including to Single Family, Multifamily, and Multifamily DIY Participants.

### **TASK C: PROGRAM CONTRACTORS**

The Operator will contract with, manage, and pay approved Program Contractors to provide project assessment, installation, and inspection services.

The Operator will:

- Certify Program Contractors, including answering questions about and facilitating any negotiation of terms with the contractor. Arrange for signing of the Contractor Agreement.
- Train contractors to adhere to Program standards. Verify and maintain record of contractor license information and status, insurance coverage, and proof of bonding that protects owners/Customers and RCPA.
- Forward verified copies of these documents to RCPA, which will maintain signed copies of the agreements including Program Contractor Agreement exhibits, Certificates of Insurance, proof of bonding, etc. in a file for each contractor.
- Ensure all agreements remain in force throughout the Program and, if necessary and in consultation with RCPA, de-certify Program Contractors who fail to adhere to the requirements in their agreements.

Deliverables

- Maintaining list of Certified Program Contractors and associated records as necessary to provide services for customers at each Partner Utility.
- Contractor Trainings for Program
- Payment to Contractors for approved projects and repairs

### **TASK D: CUSTOMER RELATIONSHIP MANAGEMENT PLATFORM**

Operator will provide and maintain a Customer Relationship Management Platform, approved by and licensed to the RCPA, to manage, store, and report on Program data. Operator will enter Program data as necessary, ensure secure storage and transfer of data in the Customer Relationship Management (CRM) system, and will ensure that data is available to Partner Utilities and RCPA. Operator's CRM and treatment of Program data will comply with Federal, California, and Program requirements for personal identifying information (PII) and customer confidentiality, including Program-approved data requirements of Partner Utilities.

The Operator will:

- Use the approved CRM for marketing and participant data management including but not limited to tracking marketing outreach; Contractor interactions; verifying participant qualification; maintaining lists of current, potential, and unqualified participants; maintaining utility rate data; reviewing and verifying calculations for participant On-Bill Charge; generating necessary agreements and forms for participants and contractors;

reporting Participant On-Bill Charges; and reporting project performance to appropriate parties.

- Ensure that staff are trained in how to use the CRM and that such staff understand Program requirements and security protocols for working with the CRM and with transfers (import or export) between the CRM and other Program communications.
- Report broken features or other errors in the CRM to RCPA so that any issues can be addressed quickly and not interfere with Program operation.

#### Deliverables

- Records of all Contractor interactions tracked in the CRM.
- Records of all Customer interactions tracked in the CRM.
- Records of all Participant interactions and project data tracked in the CRM.

### **TASK E: IMPROVEMENT INSTALLATION OVERSIGHT**

Operator is responsible for approving all projects prior to any work being done; for making sure Customers understand the Program and the basis for savings estimates; for ensuring that all Program efficiency improvements (Improvements) meet Program requirements and are installed according to manufacturer specifications and local, state, and federal building code; and for ensuring Program project calculations meet the 80 Percent Rule (the On-Bill Charge is capped at 80 percent of the estimated savings and the duration of charges is capped at 80 percent of the useful life of the upgrade); and for performing quality control inspections after project installation.

#### ***Task E.1: Pre-Project Qualification***

##### ***Customer Pre-Qualification:***

The Operator will perform the following duties to pre-qualify the Customer:

- Identify qualifying Improvements (e.g., shower and toilet usage, turf area, etc.) with brief questions.
- Identify conditions that might preclude installations (e.g., rotten floor under toilet or no interest in drought tolerant landscaping).
- Provide details for proposed Customer project by getting information during the call. Fill out the Program Data Sheet to determine estimated net savings, estimated charge and gross savings, and estimated total on-bill costs and cost recovery period.
- Review the mechanics of participation.
- For Customers referred to Program by a Program Contractor, the Operator will verify that:
  - no other savings or performance claims beyond those approved by the Program have been made by Program Contractor; and
  - the Program Contractor abides by up-selling limitations; and
  - Participants received referrals to relevant efficiency and energy programs, including applicable rebate programs.

In addition, for Multifamily Customers who are decision makers for a building:

- Discuss options for working with Program Contractor (standard pathway) or a Do-It-Yourself contractor (DIY pathway) and the benefit of using Program Contractor for scoping work via a site visit.
- If the Participant chooses the standard pathway, send Program Intent to Participate form and upon receipt of signed Intent form, select Program Contractor for a site visit and assist in scheduling the site visit. Work with Program Contractor to receive and review details of the site visit.<sup>1</sup>
- If Participant chooses the DIY pathway, send Program Intent to Participate Form and, upon receipt of signed Intent form, schedule, conduct or have a Program Contractor conduct an on-site screening for 100 percent of building units to confirm qualifying Improvements, answer Participant questions, and prepare scope of eligible Improvements.

#### Deliverables

- Pre-Project Customer Qualification for Single Family.
- Pre-Project Customer Qualification for Multifamily Standard Pathway and Multifamily DIY Pathway.
- Multifamily and DIY Participants sent Intent to Participate form.
- Coordination of Multifamily and DIY Site Visits.

#### ***Pre-Installation Approval and Agreement Issuance:***

For pre-qualified Customers, the Operator will perform the following duties before approving an installation at the Customer's location (including single family, multifamily, and commercial).

Pre-Installation APPROVAL DUTIES: For all Customers, the Operator will use Partner Utility records and telephone or Pre-Installation Inspections to verify that:

- The Customer is the property owner or that the Customer names the property owner, who must also sign the Participant Agreement.
- The Customer is the utility Customer of record or an individual authorized to sign the Participant Agreement at the location.

Customer Understanding: Ensure the Customer understands all program features, benefits, and obligations (e.g., as defined in the Participant Agreement).

Pre-Installation INSPECTION DUTIES: Operator is responsible for determining which projects receive inspections. The Operator will conduct pre-installation inspections for any Contractor's first project, at least 10 percent of Participant project sites and 100 percent of building units at multifamily DIY project sites. The Operator will:

- Verify the pre-installation property conditions, to determine whether inputs Contractors report in the Data Sheets are identical to the conditions noted by the Operator.
- Verify that the Improvements proposed for installation are possible (e.g., there are no pre-existing conditions that prevent Improvement installation)
- Update Data Sheets and Approved Improvements Form, if necessary.

<sup>1</sup> See Water Upgrades \$ave Program Manual, Section 3.4.7: Pre-Installation Site Visit.



Documentation: Populate a Participant Agreement and Cover Letter and send to Customer for review. Require Customer to send signed Participant Agreement to Operator. Operator may use all methods approved in the Program Manual to secure and store signed Agreements, including but not limited to DocuSign.

#### Deliverables

- Pre-Installation Approvals for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway
- Pre-Installation Inspections for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway
- Issued Participant Agreements (via DocuSign and other approved methods) and Participant follow up

#### ***Agreement Execution, Contractor Coordination, and Project Oversight:***

Once Operator has received a signed Participant Agreement, Operator will:

- Request from Partner Utility a record of the last 12 months of water utility bills for this location and place record in Participant's file. If RCPA or Partner Utility receives copies of PG&E's energy billing for a Participant, the Operator will add a copy to its Participant's file.
- Verify that the Participant Agreement is signed by Customer, Owner if different, Operator, and any other required parties as established in the Agreement and Program Manual.
- Verify proposed Improvements for any specific Participant project meet program requirements and use the program Data Sheet to ensure project will deliver sufficient utility bill savings to meet the program's 80 Percent Rule. Finalize and execute the Participant Agreement.
- For Participants recruited by Program marketing, complete Contractor Coordination Duties for Participants in accordance with Participant confirmation protocols for Program Marketing leads and Program Contractor leads.<sup>2</sup>
- Send the executed Participant Agreement to Participant and Program Contractor with written approval to start work.
- Monitor communications with Participant and Program Contractor to track status of the installation visit.
- Review requested change orders and issue and record approvals consistent with Program requirements.

#### Deliverables

- Executed Participant Agreements
- Contractor Coordination for Customers the Operator recruited by Program Marketing and without a stated preference for a Program Contractor
- Issued Change Orders and additional Project Oversight as required

<sup>2</sup> See Water Upgrades Save Program Manual, Section 3.2.4: Contractor Recruitment, Support, and Dispute Resolution.

### ***Task E.2: Post-Project QA/QC Inspection***

The Operator will review all required completed project forms submitted by Program Contractors and ensure all work has been completed in accordance with the Participant Agreement(s) and that Project Inputs in the CRM accurately reflect pre- and post-installation conditions and the Participant's desired scope of work.

Contractor Payment Approval: Prior to approving Program Contractor payment, the Operator will:

- Complete post-installation inspection verifications, which will be carried out through an onsite visit for the Program Contractor's first completed project and for a minimum 10 percent of total completed projects, with the remaining project post-installation inspection duties performed by phone with Participant.
- For multifamily Improvements installed through the DIY pathway, the same protocols for Quality Assurance/Quality Control (QA/QC) inspections will be followed. However, because the Participant used their own staff or contractor to install Improvements, the Operator must make a good faith effort to inspect 100 percent of building units for all completed DIY projects. The Operator will notify DIY Participant of the reason(s) for any failed inspections and will notify the Participant that it is their responsibility to fix any failures.
- Operator will verify project completion and site conditions according to Program protocols.<sup>3</sup>

Verification Discrepancies: Perform in a timely manner and as necessary activities to address discrepancies between the Participant Agreement and Participant's comments or observed conditions prior to approving Program Contractor payment.<sup>4</sup>

DIY Project Issues: For multifamily DIY projects, if Participant's staff or contractor did not correctly install approved Improvements, did not follow installation protocols, or did not provide appropriate documentation, Operator will notify Participant of the specific failure(s) that must be resolved by Participant. If Participant resolves failures, Program Operator shall complete Project Close Out activities as identified below. If Participant does not resolve failures, payment for approved Improvements shall be due per the terms of the Participant Agreement.

PROJECT CLOSE-OUT ACTIVITIES: The Operator will:

- Ensure any dispute with Program Contractors is resolved and documented (per requirements in the Program Manual) and that the Program Contractor has corrected each violation.
- Request RCPA staff, after ensuring that work has been satisfactorily installed, to issue monthly payments to Operator for its services and for Operator to make payments to Contractors.

<sup>3</sup> See Water Upgrades \$ave Program Manual, Section 3.2.6: Contractor Installation QA/QC.

<sup>4</sup> See Water Upgrades \$ave Program Manual, Section 3.2.4: Contractor Recruitment, Support, and Dispute Resolution; Section 3.2.6: Contractor Installation QA/QC, and Section 3.2.7: Project Close Out.

- Supply RCPA/Partner Utility with copies of the Participant Agreement, and relevant Program forms, for each Participant in the manner dictated by RCPA.
- Sign, notarize, and file the Notice of Efficiency Charge with the location's property records.
- Notify appropriate Partner Utility to initiate billing of On-bill Charge (including the amount and type of charges) no less than 45 days after this notice and on the first full billing cycle following verification of Program Contractor's installation of the Improvements at the location.

#### Deliverables

- Post-installation on-site verifications for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway
- Post-installation phone verifications
- Support to resolve discrepancies and disputes
- Close out final Participant Agreement and Forms, including filing of the Notice of Efficiency Charge with the location's property records

### **TASK F: PROGRAM MANAGEMENT, DATA OVERSIGHT, REPORTING, AND ONGOING CUSTOMER SUPPORT**

Operator is responsible for making sure that all agreements are complete and signed, all forms required for a specific job are complete and accurate (and signed, if appropriate), and that all data on forms and agreements are correct based on quality control verification. Estimated Customer savings and On-Bill Charges will be based on the information in these agreements and forms.

The Operator is also responsible for ongoing customer support services to Participants and Successor Customers taking service at locations with installed Improvements so long as On-Bill Charges at that location are outstanding.<sup>5</sup>

For Program Management, Data Oversight, and Reporting, the Operator will:

- Participate in twice-monthly program management meetings with RCPA. Prepare appropriate updates and report outs on Operator activities and needs. Submit follow up notes, action items, and requested data in a timely manner.
- Oversee maintenance of records of Customers who were solicited to participate and declined, who received Participant Agreements and did not sign them, and who participated in the Program, including answers to any Program survey questions.
- Maintain complete electronic record of Participant's files, including Participant Agreement; all Program forms; water and billing records; documentation of any complaints, disputes, and their resolution, and Participant praise or comments. Document all Improvement failure reports and warranty calls using Service Request Form. Copies of completed forms will be placed in each Participant's file with duplicates sent to the appropriate Partner Utility.
- Provide RCPA with twice-monthly reports on Program activity and billing. Pre-formatted reports and queries from the CRM should enable the majority of this reporting.

<sup>5</sup> See Water Upgrades \$ave Program Manual, Section 3.2.8: Project Close Out and Section 3.2.9: Failed Improvements.

- Provide RCPA with data formatted as required by CPUC regulatory reporting on a monthly, quarterly, and annual basis.
- Provide RCPA with any records, suggestions for workflow enhancements, communications, or other relevant information to enable it to evaluate and ensure the integrity of the Program.
- Ensure all Program forms are submitted, filled out correctly, and signed.

For ongoing Participant and Customer Support, the Operator will:

- Provide assistance if Improvements fail (i.e., implementing cost-effective repairs or payment cessation) for reasons other than Owner or Tenant fault.
- Ensure Contractors fulfill their warranty obligations.
- Notify appropriate Partner Utility when to stop On-bill Charges if Improvements fail, when to restart Charges after repairs are completed, and any extension of the Participant's On-Bill Charge to cover repair costs not covered by Contractor or Improvement's manufacturer warranty.
- Determine payments to Program Contractors for Improvement repairs, request payments from RCPA, and issue payments to Contractors.
- Provide same ongoing support to Successor Customers at locations with outstanding On-Bill Charges

#### Deliverables

- Follow up notes, action items, and requested data for twice-monthly program management meetings
- Oversee record of Customers and Participants contacted by Program
- Provide regular monthly reports on Program activity and billing
- Provide RCPA with data formatted as required by CPUC regulatory reporting on a monthly, quarterly, and annual basis.
- Records of ongoing Participant and Customer support

## **Exhibit H: Program Manual**

The Program Manual as approved to form by the Association of Bay Area Governments and the Partner Utility executing this Master Agreement shall be maintained on the following website:

<https://rcpa.ca.gov/wp-content/uploads/2021/01/Water-Upgrades-ave-Program-Manual-2020-0609.pdf>

## Exhibit I: Common Program Terms

This Exhibit I identifies and defines the common terms used throughout program related documents including exhibits, agreements, and manuals.

Term	Meaning
ABAG Administration Fee	Percent charge on Project Costs and due ABAG to support Administration services separate from Program Operator project responsibilities (dispute resolution), reporting to Partner Utilities, expansion post BayREN
Capital Fee	Percent charge on Project Costs and due to MTC for sourcing capital and service administration
Cost Recovery Period	Amount of time from the initial placement of the On-Bill Charge until the Total On-bill Costs are paid for
Current On-Bill Charge Report	Aggregate and current amount of all On-Bill Charges reported to Partner Utility for a given month.
Customer	Individual or other entity that is recorded on the Water Utility account.
DIY Participant	Multifamily Customer who is participating in the Program through DIY
DIY Participant Agreement	An agreement for DIY Participants
Expense	Costs associated with deferred collections. A type of cost associated with the extension of a Participant's On-bill Charge
Fee Schedule	Approved by Partner Utility it defines who pays for what, for how long, and what happens if it is not paid.
Improvements	Improvements made to the premises (toilets, aerators, landscaping etc.) as approved by the Program Operator to deliver monthly utility bill savings that exceed efficiency charge.
Local Contractor	A business with a principal business office, or a satellite office with a least one full-time employee, located within the County where the Partner Utility provides customer service.
Location	The premise where Improvements will be or are installed.
Master Agreement	Program agreement between ABAG and Partner utilities.
Materials	The Program-approved hardware involved in the installation of an Improvement such as, toilet seats, seals, flanges, nuts and bolts
Monthly Utility Payment	Monthly payment made by Partner Utility to ABAG for all current On-Bill Charges reported to Partner Utility for a given month.
Non-Participating Contractor	Contractors, maintenance staff, handymen, and other DIY installers who are not trained, licensed, and/or bonded and have not signed a contractor agreement

<b>Term</b>	<b>Meaning</b>
Notice for Lease Location	A notice from the building owner to a successor customer that must be signed prior to taking occupancy describing obligations to program including the On-Bill Charge.
Notice of Agreement	The notice to be attached to the property records at the appropriate County Recorder’s Office
On-Bill Charge	From the participating customer’s point of view, regular (monthly or bimonthly) charge on their water bill that allows the utility to recover Total On-Bill Costs for installed Improvements at that location.
On-Bill Collection	Refers to Partner Utilities’ collection of charges from ABAG’s perspective
Participant	Customer of record on the water utility account at a Location who signs the Participant Agreement
Participant Agreement	An agreement between the Partner Utility Customer, Owner (if different from Customer), and the Program Operator defining the terms and agreed-upon Improvements to be installed during the Project.
Partner Utility	Utilities that have signed the master services agreement
Program Application	A multifamily/commercial application signed by the water customer before a site visit can be scheduled stating customer intent to participate in the Program or be charged a Site Visit Expense
Program Contractor	Received program training, licensed, bonded, and has signed the contractor agreement
Program Fees	Percent-based fees calculating the APR. (Consists of Capital Fee, Admin Fee, Utility Fee)
Program Manual	Manual provides detailed guidance on program operation
Program Operator	A third-party contracted by BayREN to manage the day-to-day activities of the Program.
Program Operator Agreement	Agreement between the Program Operator and ABAG
Project	The array of activities from assessment through inspection that result in the installation of Program Improvements at a customer’s premises
Project Costs	Normal costs associated with one project: labor and materials; project and Contractor oversight
Proposal Summary	A project summary on the cost-effective analysis of Improvements at a given location that includes cost recovery period, number of Improvements, and estimated savings

<b>Term</b>	<b>Meaning</b>
Quality Assurance	Process oriented, focused on defect prevention. Activities like pre-inspection, pre-desktop review. Post desktop review.
Quality Control	Product oriented, focuses on defect identification. Includes post-inspection
Re-inspection expense	Cost associated with failed inspections debited from the Program contractor or by extending the DIY Participant's On-Bill Charge
Repair Expense	Cost associated with Program Contractors fixing installed Improvements within the cost recovery period. Cost may be recovered from Program Contractor or Material supplier during warranty periods or from participant, occupant, or owner if they caused the need for repairs
SB 407 Compliance Report	Program document breaking down by unit what fixtures do and do not comply with California state water fixture compliance law.
Site-Visit Expense	Cost associated with potential multifamily and commercial Participants that elect to receive an initial site visit and decline to complete a project with a Program Contractor or request a site visit under the DIY pathway. Those charged a site visit expense will receive a SB 407 report
Successor Customer	The new Partner Utility Customer of record accepting water service at a Location during the cost recovery period
Total On-bill Costs	Total program costs charged to a location over the recovery period. Used for costs with an associated dollar amount that includes normal (Project Costs), situational costs (Expenses), and any percentage-based fees (Program Fee)
Training Expense	Cost associated with additional training or re-training of Program Contractors
Utility Fee	Optional percent charge on Project Cost and due Partner Utility to recover costs for Partner Utility supporting program services (utility billing system maintenance; customer service questions/calls; new/successor customer noticing)
Work Acceptance Form	A form signed by the Participant accepting that all Improvements agreed upon in the Participant Agreement have been installed and to Participant satisfaction.



**RESOLUTION NO. \_\_\_\_\_**

A Resolution of the City Council of the City of Sebastopol Determining Schedule of Rates and Fees, applicable to water service customers of the Utility participating in Water Upgrades \$ave (the Program) who meet the eligibility criteria specified in Section 1 below and receive service under the Program.

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**WHEREAS**, the City of Sebastopol (City) owns and operates its own water production and distribution system drawing water from a series of wells located throughout the City and operating two reservoir facilities to provide water storage capacity; and

**WHEREAS**, the City Council has adopted a policy that the City be able to supply two times the water demand to ensure that the City has sufficient redundancy in the event of a facility malfunction or shutdown for maintenance, upgrade or repair; and

**WHEREAS**, on January 7, 2020, the City Council of the City of Sebastopol adopted Resolution No. 6279 to set new water and sewer rates for the City of Sebastopol Water and Sewer Utility effective January 7, 2020, and remain in effect until changed by the City Council; and

**WHEREAS**, Chapter 12.03 of the City's municipal code declares that, because of the conditions prevailing in the City, in the County of Sonoma, and/or the State of California, the public health, safety, and welfare require that the water resources available to the City be put to the maximum beneficial use to the extent to which they are capable, to promote water conservation and the efficient use of potable water furnished by the City, by eliminating intentional or unintentional water waste when a reasonable alternative solution is available, and by prohibiting use of equipment which is wasteful; and

**WHEREAS**, the City agrees to implement the Program in its jurisdiction by executing a Master Agreement with ABAG and adopting Water Upgrades \$ave Schedule of Rates and Fees,

**WHEREAS**, the Bay Area Regional Energy Network (BayREN) provides a regional Water Upgrades \$ave Program (Program) that provides a mechanism for the City's water utility customers to fund the installation of water efficiency improvements to a property using an on-bill charge applied to the customer's water bill and this charge is lower than the volumetric water bill savings resulting from the installation and for the property to meet code requirements while reducing water demand, and

**WHEREAS**, Water Upgrades \$ave provides project installation and financing services to eligible municipal water utility customers in partnership with the Association of Bay Area Governments (ABAG), which pays Program Contractors for approved project installations, notifies the utility to place the charge on the customer's bill, and manages daily program operations, and

**WHEREAS**, the City, provides on-bill charge initiation, tracking, and collection, and periodic ABAG repayment of all unpaid charges regardless of actual collection from the utility customer; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Sebastopol approves and adopts the Water Upgrades \$ave Schedule of Rates and Fees set forth in Exhibit A.

**IN COUNCIL DULY PASSED** this 19 day of January 2021.

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

APPROVED: \_\_\_\_\_  
Una Glass  
Mayor, City of Sebastopol

**VOTE:**

AYES:

NOES:

ABSENT:

ABTAIN:

ATTEST: \_\_\_\_\_  
Mary Gourley, MMC, Assistant City Manager/City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
Larry McLaughlin, City Attorney

# EXHIBIT A

## WATER UPGRADES SAVE SCHEDULE OF RATES AND FEES

### Applicability

This Schedule of Rates and Fees is applicable to water service customers of Utility participating in Water Upgrades Save (the Program) who meet the eligibility criteria specified in Section 1 below and receive service under the Program.

### Definitions

The definitions of capitalized terms used in this Fee Schedule are provided here.

**ABAG Administration Fee:** A percent charge on Project Costs paid to the Association for Bay Area Governments (ABAG) to support Program administration such as payment and accounting, expansion of services, dispute resolution, and reporting.

**Capital Fee:** A percent charge on Project Costs due to ABAG to recover financing costs for sourcing and administering capital.

**Contractor Agreement:** An agreement between a Program Contractor and the Program Operator that defines all contractor responsibilities, obligations, and payment terms.

**Cost Recovery Period:** The amount of time from the initial placement of the On-Bill Charge until the Total On-Bill Cost is paid.

**Customer:** Individual or entity/agency that is recorded on the water utility account at the City of Sebastopol at a specific Location.

**Do-It-Yourself (DIY) Participant:** Multifamily or commercial building owners who participate in the Program's DIY pathway, using their own staff or a contractor that is not a Program Contractor.

**Improvements:** Upgrades installed at the Location and approved by the Program Operator to deliver monthly utility bill savings.

**Intent to Participate Form:** An application signed by a potential Multifamily or Commercial Participant before a site visit can be scheduled stating the potential Participant's intent to participate in the Program and conditions for any Site-Visit Expense that may be charged to the potential Participant's water bill. Submission of an Intent to Participate Form is required for Multifamily and Commercial customers.

**Location:** The premise where Improvements will be/are installed.

**Master Agreement:** Program agreement between ABAG and the Partner Utilities.

**Notice of Efficiency Charge:** The notice to be attached to the property records at the appropriate County Recorder's Office regarding obligations associated with the Program, including requirements to pay the On-Bill Charge.

**On-Bill Charge:** The regular monthly charge on a Program Participant's or Successor Customer's bill for recovery of Total On-Bill Cost associated with Program Improvements at the Participant's or Successor Customer's Location.

**Owner:** Individual or entity/agency that owns the Location.

**Participant:** Customer of record on the water utility account at a Location who signs the Participant Agreement.

**Participant Agreement:** An agreement between the Customer of record at a Location with installed Improvement, the Owner of that Location if different from the Customer, the City of Sebastopol, and the Program Operator as applicable that defines all Customer or Owner benefits and obligations under the Program.

**Partner Utility:** Utilities that have signed the program Master Agreement.

**Program:** Services provided in exchange for the On-Bill Charge, including site visits, installation of Improvements, and administration.

**Program Contractor:** A licensed, bonded contractor that is approved to provide Program Services and abides by the terms of the Contractor Agreement.

**Program Fees:** Fees based on Annual Percentage Rate (APR) calculation, such as Capital Fees, ABAG Administration Fees, and Utility Fees.

**Program Fees:** Fees based on Annual Percentage Rate (APR) calculation for Capital, ABAG Administration, and Utility Fees.

**Program Operator (Operator):** The third-party Program administrator.

**Project:** The installation of Improvements at a particular Location

**Project Costs:** Normal costs associated with a single Location for Improvement installation, including labor and material costs and project administration, costs for customer enrollment and quality assurance/quality control. Project Costs do not include Situational Expenses, such as Repair Expenses and DIY Re-inspection Expenses.

**Proposal Summary:** A project description provided by the Program Operator on the cost-effective analysis of Improvements at a given Location. The summary includes the Cost Recovery Period, number of proposed Improvements, and estimated savings.

**Re-inspection Expense:** Cost associated with failed inspections for DIY Participant Projects.

**Rental Notice for On-Bill Efficiency Improvements:** A notice from the owner to a Successor Customer renting a Location with an active On-Bill Charge of the Program regarding benefits and obligations, including requirements to pay the Program's On-Bill Charge.

**Repair Expense:** Cost associated with fixing installed Improvements within the Improvement's Cost Recovery Period.

**SB 407 Compliance Report:** A compliance report provided to all potential Participants who receive a Site Visit or Participants installing Improvements stating a project’s level of compliance with California Senate Bill 407.

**Site Visit:** A visit made by a Program Contractor to a multifamily or commercial location to assess opportunities to effectively install Improvements at the location in accordance with Program requirements and inform the development of a Proposal Summary.

**Site-Visit Expense:** A cost paid to the Program Contractor to compensate for performing a Site Visit to a multifamily or commercial location where the customer declines to participate, cancels, or chooses the DIY pathway. This expense is added as a one-time, single line item charge on the water bill and the customer will receive a complimentary SB407 Compliance Report.

**Situational Expenses:** Costs associated with the extension of a Participant’s or Successor Customer’s On-Bill Charge based on situational requirements, such as Repair or DIY Re-inspection.

**Successor Customer:** The new City of Sebastopol customer of record accepting water service at a Location during the Cost Recovery Period.

**Total On-Bill Cost:** The total Project Costs, Program Fees, and applicable Situational Expenses, including Site Visit Expenses, DIY Re-inspection Expenses, and Repair Expenses charged to a Location over the Cost Recovery Period.

**Utility Fee:** An optional percent charge on Project Costs paid to the City of Sebastopol to recover costs for supporting Program Services.

## Fees, Charges, and Expenses

Type of Fee	Amount	Detail
On-Bill Charge	Varies by Location	Fixed charge based on Project Costs, ABAG Administration Fee, Capital Fee, Utility Fee, and the Cost Recovery Period
Project Costs	Varies by Location	Varies based on number of Improvements, labor and material costs, quality assurance, contractor oversight, and permits
ABAG Administration Fee	1 percent of Project Costs	Services include dispute resolution, reporting, accounting, and Program expansion
Utility Fee (Optional)	Up to 2 percent of Project Costs	Fee is paid to the Utility based on number of projects completed in its jurisdiction each month
Capital Fee	2 percent of Project Costs	Services include acquiring and providing capital; cost of capital
Site Visit Expense	\$200 plus \$10 per unit	The expense for an on-site project assessment and SB407 Compliance Report; paid to the Program Contractor
Re-Inspection Expense	\$150 plus \$10 per unit	Cost per visit for failed quality assurance or quality control inspections; debited from amounts due to the Program Contractor or billed to DIY Participant
Repair Expense	\$150 per hour	Recovered by extending the Cost Recovery Period as long as Improvements are functioning

## Application

- 1.0 Eligibility:** Eligible on an optional and voluntary basis to Customers of the utility (City of Sebastopol) with accounts in good standing for 12 months, or the duration of their utility service if their account has been open less than 12 months, who request installation of water efficiency Improvements at their Location as an essential utility service.
- 2.0 Participation:** To be a Participant in the Program, a Customer must: (1) be pre-qualified by the Program Operator (Operator), (2) agree to pay On-Bill Charges as described in the table under Fee, Charges, and Expenses, (3) receive a Proposal Summary from the Program Operator, and (4) sign a Participant Agreement that defines Customer benefits and obligations.
- 2.1 Premise Ownership:** If the Participant is not the Owner of the premises, the Owner must sign and abide by the Owner Agreement.
- 2.2 Notice of Agreement:** The Owner must agree in writing as part of the Participant Agreement (if the Owner is the Customer) or Owner Agreement (if the Owner is not the Customer) to having a Notice of Agreement attached to their property records at the appropriate County Recorder's Office.
- 2.3 Notice for Leased Location:** If the Owner of a Location with installed Improvements leases the Location to a Successor Customer, Owner must notify the Successor Customer of Program benefits and obligations, including requirements of the Program's On-Bill Charge as described in Section 7, using a Rental Notice for On-Bill Efficiency Improvements. Failure to obtain Successor Customer's signature on the Rental Notice for On-Bill Efficiency Improvements prior to the Successor Customer taking occupancy will constitute the Owner's acceptance of consequential damages and permission for Successor Customer to break their lease or rental agreement without penalty. Owner must also include discussion of the obligation to pay the On-Bill Charge in the terms through which the Success Customer leases or licenses the premise.
- 2.4 Do-It-Yourself (DIY) Option:** Multifamily or Commercial Participants may choose to have their own staff or contractor install Program-approved Improvements at the Participant's expense while the upfront cost of Improvements is otherwise covered by the Program. Participants choosing the DIY Option must sign an Intent to Participate Form to notify the Operator of an intent to sign a Participant Agreement prior to any consideration of their participation. If the Participant chooses the DIY option, the Participant will pay the Site-Visit Expense as described in Section 3.4.
- 3.0 Proposal Summary:** Based on customer reported information and findings from the Site Visit as applicable for multifamily and commercial locations, the Program Operator shall perform a cost-effectiveness analysis and prepare a Proposal Summary to install Improvements identifying recommended upgrades to improve water efficiency and lower utility costs. Customers who receive a site visit from the Program Contractor and decline to participate in the Program will receive a one-time charge for the visit and receive a SB 407 Compliance Report as described in the table under Fees, Charges, and Expenses.

- 3.1 Incentive Payment:** The On-Bill Charge to install Improvements may be offset with a City of Sebastopol subsidy for Program participation that is less than or equal to the value of the Improvements to the City of Sebastopol or any rebate that is available to all Customers who install a specific Improvement.
- 3.2 Net Savings:** Improvements shall be limited to those where the annual On-Bill Charges are no greater than 80 percent of the estimated annual Participant utility bill savings based on current rates for water and sewer and other utility services (e.g., gas or electric).
- 3.3 Copay Option:** In order to qualify proposed Improvements that are not sufficiently cost effective to meet the requirements in Section 3.2, Participants may agree to pay an upfront payment, or copay, to the Program Contractor for the portion of the Project Cost that exceeds the maximum amount determined to meet Section 3.2 requirements. The City of Sebastopol will assume no responsibility for such copay payments to the Program Contractor.
- 3.4 Site-Visit Expense:** All Owners of multifamily or commercial premises who sign an Intent to Participate Form will be charged a Site-Visit Expense if they decline to sign a Participant Agreement to install any Improvements or opt to become DIY Participants after receiving a Site Visit from a Program Contractor and Proposal Summary that resulted in estimated immediate savings without co-pay.
- 3.5 Existing Buildings:** Projects that propose Improvements to existing buildings deemed unlikely to be habitable or to serve their intended purpose for the City of Sebastopol's Cost Recovery Period will not be approved unless other funding can pay for repairs needed to qualify the building for the Program (e.g., rotted floors, deteriorated plumbing distribution system). If a building is a manufactured home, to be eligible it must be built on a permanent foundation and fabricated after 1982, when comprehensive federal standards were approved.
- 4.0 Program Operator:** The City of Sebastopol will sign a Master Agreement with the Association of Bay Area Governments (ABAG). This agreement defines the City of Sebastopol's relationship to ABAG, which will provide the financing service, and the Program Operator, who will implement the Program.
- 5.0 Program Contractor:** Should the Participant decide to proceed with implementing the Proposal Summary, the Program Operator shall determine the appropriate monthly On-Bill Charge as described in Section 7.0. The Participant shall sign a Participant Agreement and may be appointed or select a contractor from the Program Operator's list of Program Contractors. Participants choosing the DIY option may not hire Program Contractors to install Improvements.
- 6.0 Project Close Out:** When installation of Improvements is completed, the Program Contractor shall notify the Program Operator in accordance with their Contractor Agreement. Following on-site or telephone inspection and approval of the Improvement's installation by the City of Sebastopol or the Program Operator, the Program Operator will arrange for Program Contractor payment. The Program Operator will notify DIY Participants of the status of project close out,

quality control inspections, and when On-Bill Charges will be authorized within three days of receiving the invoice for Improvements. DIY Participants must notify the Program Operator when their staff or contractor has completed the installation of the Improvements or be subject to Section 7.1.

- 7.0 On-Bill Charge:** The City of Sebastopol will recover the cost for its investments, including any fees as allowed in this Schedule, through a monthly On-Bill Charge assigned to the Location where Improvements are installed and paid by Participants or Successor Customers occupying that Location until the Total On-Bill Cost has been recovered. On-Bill Charges will be set for a Cost Recovery Period not to exceed 80 percent of the estimated life of the Improvements or the length of a full parts and labor warranty, whichever is greater and in no case longer than ten years. If proposed Improvements are sufficiently cost effective such that they can meet the requirements of Section 3.2 with a shorter Cost Recovery Period, the Participant or Successor Customer may request a shorter period. The Total On-Bill Cost and Cost Recovery Period will be included in the Participant Agreement.
- 7.1 Cost Recovery:** For DIY Participants, the City of Sebastopol will begin billing On-Bill Charges 45 days after the Program Operator notifies the DIY Participant of receipt of the invoice for Improvements, regardless of whether the installation of those Improvements has been completed or approved. On-Bill Charges for all other Participants or Successor Customers will begin no sooner than 45 days after project close out approval by the Project Operator. The City of Sebastopol will bill and collect On-Bill Charges until cost recovery is complete, except in cases discussed in Section 8. Prepayment of unbilled charges will not be permitted to facilitate installed Improvements remaining and continuing to function at the Location for at least the Cost Recovery Period.
- 7.2 Ownership of Improvements:** The City of Sebastopol will retain ownership of the Improvements while On-Bill Charges are being billed at the Location where Improvements have been installed. At the termination of On-Bill Charges, ownership transfers to the Location owner.
- 7.3 Maintenance of Improvements:** Participants and building owners (if the building owner is not the water customer) agree by signing the Participant Agreement or the Owner Agreement to keep the Improvements in place for the Cost Recovery Period, maintain the Improvements per manufacturers' instructions, not damage the Improvements (or let Participants' or Owners' tenants, guests, or invitees damage them), and immediately report failure of any Improvements to the Operator or City of Sebastopol. If an Improvement fails, the Operator or City of Sebastopol shall determine the cause of failure and is responsible for repairing the Improvements in a timely manner as long as the Participant or owners' tenants, guests, or invitees did not damage the Improvements, in which case the Participant or Owner will reimburse the City of Sebastopol as described in Section 8.
- 7.4 Termination of On-Bill Charge:** Once the City of Sebastopol's Total On-Bill Cost for Improvements at a Location have been recovered, the On-Bill Charge shall no longer be billed, except as described in Section 8.



- 7.5 Vacancy:** If a Location at which Improvements have been installed becomes vacant for any reason and water service is disconnected, On-Bill Charges will be suspended until a Successor Customer takes occupancy. If an Owner maintains water service at the Location, the Owner will be billed On-Bill Charges on the water bill.
- 7.6 Extension of On-Bill Charge:** If the On-Bill Charge is reduced or suspended for any reason, the number of total monthly payments shall be extended as long as the Improvement is still functioning, until the total On-Bill Charges collected equal the Total On-Bill Cost for the Installation as described in Section 7, unless the City of Sebastopol waives remaining charges as described in Section 8.
- 7.7 Tied to the Location:** Until cost recovery for Improvements at a Location is complete or the City of Sebastopol waives remaining charges as described in Section 8, the terms of this schedule shall be binding on the Location and any Successor Customer who shall receive service at that Location.
- 7.8 Collections:** Without regard to any other state or utility rules or policies, the On-Bill Charge shall be considered as an essential part of the Participant's or Successor Customer's bill for water and or wastewater service, and the City of Sebastopol may pursue cost recovery according to all authorized collection practices and rate setting authorities, including but not limited to disconnection of service to the Location for non-payment of On-Bill Charges under the same provisions as for any other utility charges for essential services and cost recovery from all rate-payers. If service is disconnected for Participants or Successor Customers on pre-paid payment plans (e.g., low and moderate income), On-Bill Charges will be pro-rated by the day.
- 8.0 Repairs:** Should at any future time during the billing of On-Bill Charges the Program Operator or City of Sebastopol determine that the installed Improvements are no longer functioning as intended and that the Participant, Successor Customer, occupant, or building owner, did not damage or fail to maintain the Improvements in place, the City of Sebastopol shall reduce or suspend the On-Bill Charges until such time as the Program Operator and/or a Program Contractor can repair the Improvements. If the Improvement cannot be repaired or replaced cost effectively, the City of Sebastopol will waive remaining charges.

If the City of Sebastopol or Program Operator determines the Participant, Successor Customer, occupant, Owner, or Participant's, Successor Customer's, occupant's or Owner's tenants, invitees, or guests damaged or failed to maintain the Improvements in place as described in Section 7.3, it will seek to recover the Total On-Bill Cost associated with the Installation, including any fees, incentives paid to lower Project Costs, and legal fees. The On-Bill Charges will continue until City of Sebastopol cost recovery is complete.