



DATE: April 22, 2020
TO: Energy Council
FROM: Jennifer West, Program Manager
SUBJECT: Heat Pump Water Heater Grant Update and Agreement with EBCE and MCE

SUMMARY

Staff is requesting Energy Council approval to enter into an Agreement with local energy providers in the Bay Area to implement the Regional Heat Pump Water Heater (HPWH) Contractor Incentive Program.

DISCUSSION

In January 2020, the Energy Council approved the negotiation of an Agreement for local energy providers to pool funds providing incentives to contractors installing HPWHs. A link to the January 2020 memo is available here: [Heat-Pump-Water-Heater-Grant-Memo-01-22-20.pdf](#). This Agreement is now completed and ready for your approval.

As of April 2020, two Community Choice Aggregators (CCAs) are ready to join the Program: MCE and East Bay Community Energy, covering five of the nine Bay Area counties. We anticipate that a few more LEPs (Local Energy Providers) will join the BayREN program within the year, specifically CleanPowerSF (July 2020), and Peninsula Clean Energy (October 2020). Staff will be updating Exhibits B-2 and B-3 of the Cooperative Agreement as new agencies join the Program.

Local Energy Provider	Type of LEP	Geographic territory	Planning to Join Program
East Bay Community Energy	CCA	Alameda County (excluding City of Alameda, and including Tracy as of 2021)	April 2020
MCE	CCA	Marin, much of Contra Costa, Napa and Solano Counties	April 2020

The Energy Council created a uniform, regional midstream program for HPWHs. We are still finalizing the total amount of incentives that might be processed through this agreement. The current commitment is for \$600,000 from EBCE and MCE, as outlined in the agreement. We

anticipate more participating agencies to provide additional incentives, and are requesting authorization to accept up to \$1,200,000.

RECOMMENDATION

Adopt the attached Resolution authorizing the Executive Director to enter into an Agreement with local energy providers for implementation of the Bay Area Regional HPWH Contractor Incentive Program and other related actions.

Attachment A: Cooperative Agreement for the Bay Area Regional HPWH Contractor Incentive Program

**ENERGY COUNCIL
RESOLUTION #EC 2020 –**

**MOVED:
SECONDED:**

AT THE MEETING HELD April 22, 2020

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AGREEMENTS FOR THE
HEAT PUMP WATER HEATER INCENTIVE PROGRAM AND OTHER RELATED ACTIONS**

WHEREAS, the Energy Council recognizes that it is in the interest of local, regional, state, and federal agencies to stimulate the economy; create and retain jobs; reduce fossil fuel emissions; and reduce total energy usage and improve energy efficiency; and

WHEREAS, the Energy Council was formed to seek funding to develop and implement programs and policies that reduce energy demand, increase energy efficiency, advance the use of clean, efficient and renewable resources, and help create climate resilient communities; and

WHEREAS, the Energy Council adopted fuel switching (electrification) as a priority area for external grant seeking; and

WHEREAS, in consultation with the Energy Council Technical Advisory Group (TAG), staff identified heat pump water heaters as a promising technology; and

WHEREAS, the Bay Area Air Quality Management District (BAAQMD) released a 2018 Climate Protection Grant program to accelerate local climate protection efforts; and

WHEREAS, the Energy Council partnered with the Bay Area Regional Energy Network (BayREN) to submit a regional market development proposal for heat pump water heaters, and

WHEREAS, BAAQMD awarded BayREN a grant of \$400,000 for the proposal entitled Heat Pump Water Heater Regional Market Transformation;

WHEREAS, ABAG provided the Energy Council with a contract of \$390,000 for

- Coordination among local energy providers throughout the region for program design
- Engaging the supply chain for greatest leverage
- Workforce development for contractors, building departments and trade allies, including information on other incentive programs in the area
- Homeowner education and awareness to grow a receptive body of consumers
- Limited installation of heat pump technology in multifamily buildings;

WHEREAS, The Energy Council has engaged with Local Energy Providers to develop a program for providing incentives for contractors installing heat pump water heaters as described in the Cooperative Agreement attached as Attachment A.

NOW THEREFORE, BE IT RESOLVED, that the Energy Council hereby authorizes the Executive Director to:

1. Finalize and execute the attached agreement with Local Energy Providers in order to accept additional funds not to exceed \$1,200,000, and make any necessary changes to the FY 2019-2020 budget to Project 1311: HPWH Grant.
2. Enter into all necessary contracts and agreements with the program provider to streamline incentive processing and payments.
3. Approve any required time extensions, modifications, or amendments thereto.
4. Allocate the necessary resources to implement and carry out the amended scope of work.

ADOPTED this 22nd day of April, 2020, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAINED:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of Resolution #EC 2020 –

ARLISS DUNN
Clerk of the Board

**COOPERATIVE AGREEMENT FOR
BAY AREA REGIONAL HEAT PUMP WATER HEATER CONTRACTOR
INCENTIVE PROGRAM**

This agreement (“Agreement”) by, between, and among the agencies whose signatures appear in Exhibit A (“Participating Agencies”) effective as of the date that it is signed by at least two Participating Agencies (“Effective Date”) and effective as to later signatories as of the date of their signature, with a term as set forth in section 9, is made with reference to the following facts:

A. Heat Pump Water Heaters (HPWH) provide high-efficiency water heating powered by electricity, which in the San Francisco Bay Area is now cleaner than natural gas in terms of greenhouse gas emissions. HPWHs also provide thermal storage, allowing electricity to be used only during low-emission and low-cost times of day, reducing demand during peak periods.

B. Installation of HPWHs in residential buildings as soon as practical is important because greenhouse gas emissions cause global warming, and the urgent and immediate reduction of emissions will reduce the long term, cumulative impacts of these pollutants on the environment.

C. Incentives for installation of HPWHs in residential buildings are necessary because the market for HPWHs in the San Francisco Bay Area is still developing and multiple barriers make HPWH installations uncommon. Incentives will bring attention to this high-efficiency product, bring down the upfront costs of the equipment and installation, provide increased demand for contractors knowledgeable about HPWHs, and help home-owners to make the choice to install a HPWH more economical.

D. The Energy Council (also referred to as “StopWaste”) is a Participating Agency and is a joint powers agency comprised of Alameda County and all the cities in Alameda County. Its mission is to develop and implement programs and policies that reduce energy demand, increase energy efficiency, advance the use of clean, efficient and renewable resources, and help create climate resilient communities. The Energy Council administers market transformation programs for sustainable buildings in Alameda County and the Bay Area region, such as BayREN’s multifamily technical assistance and incentive program.

E. The other Participating Agencies include local energy providers (either community choice aggregators (CCA) or publicly owned utilities (POU)) and other public agencies with an interest in promoting early adoption of HPWH in residential buildings to advance their collective mission to provide cleaner, greener energy at competitive rates to customers, and reinvest earnings back into the community for local green energy jobs, local programs and clean power projects.

F. This Agreement sets forth the terms whereby the Participating Agencies agree to cooperate to support the Bay Area Regional HPWH Contractor Incentive Program (“Program”) described in Exhibit B.

G. NOW, THEREFORE, in order to establish their respective rights and obligations concerning the administration and financing of the Program, it is agreed as follows:

1. **SCOPE OF PROGRAM.**

The Program shall be as set forth in Exhibit B which sets forth, in Exhibit B-1, the incentives to be provided, in Exhibit B-2 the work to be performed by consultants, Energy Council, and other Participating Agencies in providing those incentives, in Exhibit B-3, the costs of administering the incentives, and, in Exhibit B-4, the supporting activities the Energy Council is performing to develop the market for HPWHs under a grant from the Bay Area Regional Energy Network (BayREN) and the Bay Area Air Quality Management District (BAAQMD) described in Exhibit B-4 and referred to in this Agreement as the BAAQMD Grant.

2. **PROGRAM ADMINISTRATION.**

(a) Duties of Energy Council

Energy Council is the lead agency for the Program and its Program Manager shall act as Program Administrator and is authorized to provide any approvals required under this Agreement on behalf of Energy Council. As lead agency Energy Council shall perform the duties set forth in Exhibit B-2 and Exhibit B-4.

The powers and duties herein conferred to Energy Council, as the lead agency for the Program, shall not include the power to make any material change in the Program without the prior written consent of the remaining Participating Agencies. In the event a Participating Agency gives the Energy Council written notice of a “litigation hold” or a request for records under the California Public Records Act (Gov. Code § 6250 *et seq.*), then as to all records identified in such notice, the Energy Council shall isolate and preserve all such records pending receipt of further direction from the Participating Agency.

(b) Duties of Participating Agencies

Participating Agencies other than Energy Council shall perform the duties set forth in Exhibit B-2. By approving this Agreement, each Participating Agency authorizes the staff position listed for its agency in Exhibit A to provide any approvals required under this Agreement on behalf of that agency.

(c) Project Coordination

The Participating Agencies will meet quarterly, or as business requires, to guide the Program.

3. PAYMENT OF COSTS.

Each Participating Agency agrees to pay costs allocated to that agency in the amount, time, and manner set forth in Exhibit B-3.

4. INSURANCE REQUIREMENTS.

Energy Council shall include in any contracts awarded for the Program a requirement that the contractor, at all times performing work in connection with the Program, maintain in full force and effect the insurance coverages according to the requirements stated in Exhibit C. In addition, Energy Council shall maintain in full force and effect the insurance coverages according to the requirements stated in Exhibit C

5. PROGRAM RECORDS.

Energy Council shall keep and maintain a complete copy of all records regarding costs and expenditures relating to the Program, together with a complete copy of all reports, contracts and other documents relating to the Program, and the same shall be available for inspection by Participating Agencies at any time during usual business hours. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after the termination or expiration of this Agreement. Energy Council shall include the same audit and inspection rights and record retention requirements in any contracts awarded under the Program.

6. PROGRAM REPORTS.

In addition to the reports required in Exhibit B-2, no later than March 1 of each year that this Agreement is in effect and no later than sixty days following the termination of this Agreement, Energy Council shall provide the Participating Agencies with a report on the Program's accomplishments during the prior year (or, in the case of the final report, during the time since the most recent prior report) including, at a minimum, the information specified in Exhibit B-2. The annual report shall not include any identifiable customer information or other confidential information.

In addition to the reports required in Exhibit B-2, no later than March 1 of each year that this Agreement is in effect and no later than sixty days following the termination of this Agreement, the Program Provider for the Program shall provide directly to each Participating Agency a report on the Program's activity within the Participating Agency's jurisdiction during the prior year (or, in the case of the final report, during the time since the most recent prior report) including at a minimum the information specified in Exhibit B-2. All confidential information in this report shall be included in a separate confidential appendix. The Program Provider is defined as the

consultant retained to process incentives and administer the Program through a contract with the Energy Council.

7. NEW PARTICIPATING AGENCIES.

Following the Effective Date, any agency not listed in Exhibit A as of the Effective Date may become a Participating Agency upon (1) presenting an adopted resolution to the Energy Council requesting to become a party to this Agreement, specifying the funds to be made available, and accepting financial responsibility for its share of costs in accordance with Exhibit B-3; (2) receiving approval of the request from the Energy Council; and (3) signing this Agreement. Exhibit A and the Funding Table in Exhibit B-3 shall be updated by the Energy Council to list each new Participating Agency and the funds contributed.

8. DISPUTE RESOLUTION.

The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. Each party shall bear its own costs and attorneys' fees.

9. TERMINATION OF AGREEMENT.

This Agreement shall remain in effect for three years, or until March 31, 2023 unless earlier termination of the Agreement is agreed upon in writing by all signatories. This Agreement may be extended by the written mutual consent of all parties. Upon such termination, Energy Council shall within thirty (30) days refund to Participating Agencies any balance of their respective contributions remaining after deduction of the proportional Program costs, defined in Exhibit B-3, incurred to the date of termination and payable by each party under the terms of this Agreement. A Participating Agency may terminate its participation in the Program upon thirty (30) days' notice to the Energy Council; upon such termination, Energy Council shall within thirty (30) days refund to the terminating Participating Agency the balance of any contributions remaining after deduction of the proportional Program costs incurred to the date of termination. Upon termination, Energy Council shall, along with the refund of any remaining balance, provide a detailed invoice describing the deducted Program costs to the Participating Agency.

10. LIMITATION OF LIABILITY.

No party to this Agreement shall be responsible or liable to any other party or parties for any act or omission made in good faith in connection with the performance of its duties hereunder nor shall any party be responsible or liable for any act or omission by any consultant or contractor retained for the performance of any services related to the Program or by any incentive recipients. The parties shall contribute towards

any loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the performance of this Agreement by one of the parties to this Agreement in proportion to their contributions to the cost of the Program. This paragraph shall not be construed to exempt any party, including its employees and officers, from liability for its own fraud, willful injury or violation of law whether willful or negligent and other Participating Agencies shall not be liable for such loss, liability, expense, claim, costs (including costs of defense), suits, and damages.

Energy Council shall include in any contracts awarded for administration of the Program and as a condition for receipt of an incentive, a requirement that the contractor and the incentive recipient, to the fullest extent permitted by law, indemnify, defend, and hold harmless, jointly and severally, the Participating Agencies, their employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this Agreement or participation in the Program.

Energy Council shall include as a condition for receipt of an incentive a requirement that the incentive recipient warrants to its customer that all materials and equipment furnished shall be new, free from faults and defects and of good quality and shall further warrant its work against all deficiencies and defects for a minimum of twelve months.

11. JURISDICTION.

This Agreement shall be administered and interpreted under the laws of the State of California with venue in Alameda County. Jurisdiction of litigation arising from this Agreement shall be in that state.

12. ASSIGNMENT.

No party to this Agreement may assign any right or obligation pursuant to this Agreement without prior consent of all the parties and such consent shall not be unreasonably withheld. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

13. PARTIES IN INTEREST.

This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

14. SEVERABILITY

If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

15. TIME IS OF THE ESSENCE

The parties agree that time is of the essence regarding the performance of this Agreement.

16. NON-DISCRIMINATION

In the performance of this Agreement, the parties shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

17. WAIVER

A waiver by a party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

18. AUTHORITY

The individual(s) executing this Agreement represent and warrant that they have the legal authority to do so on behalf of their respective legal entities.

19. CAPTIONS AND TERMS

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

20. EXHIBITS

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. Terms used in the Exhibits shall have the definitions set forth in this Agreement.

Exhibit A – Participating Agencies

Exhibit B - HPWH Incentive Program Description

Exhibit B-1 – Incentive Program Description

Exhibit B-2 – Scope of Work and Program Details

Exhibit B-3 – Funding Program
Exhibit B-4 – Additional Supportive Activities of the Energy Council

Exhibit C – Insurance Requirements

21. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

22. COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

23. DRAFTING PARTY

This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

24. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF ANY JOINT POWERS AUTHORITY

For any party to this Agreement that is organized as a Joint Powers Authority (“JPA”) in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) and is a public entity separate from its constituent members, the JPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The other parties shall have no rights and shall not make any claims, take any actions or assert any remedies against any of a JPA’s constituent members in connection with this Agreement.

25. ENTIRE AGREEMENT.

This Agreement contains all of the covenants and agreements between the parties and supersedes any and all agreements, either oral or written, between the parties with respect to the Program. This Agreement includes each of the exhibits referenced herein and listed on the Exhibit List included herein. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. No Alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date as evidenced by the signature accompanying each Participating Agency's name on Exhibit A. This Agreement may be signed in counterparts each of which is an original and all of which constitute one and the same instrument.

Exhibit A – Participating Agencies

<i>Agency and Authorized Signatory</i>	<i>Agency Approval</i>
The Energy Council Wendy Sommer, Executive Director	<hr/> (Signature) <hr/> (Print Name & Title) <hr/> (Date) Approved as to Form: <hr/> (Print Name & Title)
East Bay Community Energy	<hr/> (Signature) <hr/> (Print Name & Title) <hr/> (Date) Approved as to Form: <hr/> (Print Name & Title)
MCE	<hr/> (Signature) <hr/> (Print Name & Title) <hr/> (Date) Approved as to Form: <hr/> (Print Name & Title)

The following Table consists of Primary Contacts for Participating Agencies. Primary contact can be changed with written notification to the Energy Council:

<i>Agency</i>	<i>Agency Primary Contact Information</i>
The Energy Council	<p>Jennifer West jwest@stopwaste.org 510-891-6500</p> <p>The Energy Council 1537 Webster Avenue Oakland, CA 94612</p>
East Bay Community Energy	<p>Beckie Menten bmenten@ebce.org 510-988-1736</p> <p>EBCE 1999 Harrison St Suite 800 Oakland, CA, 94612</p>
MCE	<p>Lois Smith lsmith@mcecleanenergy.org 925-378-6779</p> <p>MCE 2300 Clayton Road STE 1150 Concord, CA 94520</p>

Exhibit B

Bay Area Regional Heat Pump Water Heater Contractor Incentive Program

Exhibit B consists of the following four exhibits:

- Exhibit B-1 – Incentive Program Description
- Exhibit B-2 – Scope of Work and Program Details
- Exhibit B-3 – Program Funding
- Exhibit B-4 – Additional Supportive Activities of the Energy Council

Exhibit B-1

Heat Pump Water Heater Contractor Incentive Program Description

The HPWH Contractor Incentive Program is a market development initiative delivered by the Energy Council, under BayREN's oversight, with startup funding from the Bay Area Air Quality Management District. The Energy Council (also known as StopWaste) is the BayREN representative for Alameda County, and is the lead on this HPWH Incentive Program. That is why the Energy Council is entering into this Agreement with Participating Agencies and overseeing the Program administration, including the collection and payment of incentive funds and the contract with the Program Provider.

HPWHs are a high-efficiency electric appliance available for water heating in the Bay Area, and are a critical strategy for reducing greenhouse gas emissions from gas-fueled appliances. This Program will develop and stimulate the HPWH market so that more HPWHs are installed, and will train, inform and incentivize the contractor workforce to consistently recommend this technology for residences where appropriate. The Program aims to overcome barriers to increased market share for HPWHs by offering a simple, consistent and regional midstream incentive.

The BAAQMD grant is funding the following activities:

- Coordination among local energy providers throughout the region for program design
- Engaging the supply chain for greatest leverage
- Workforce development for contractors, building departments and trade allies, including information on other incentive programs in the area
- Homeowner education and awareness to grow a receptive body of consumers
- Limited installation of heat pump technology in multifamily buildings

The Participating Agencies are participating in the Program, in part, based on the understanding that the Energy Council will implement the activities funded by the BAAQMD grant and passed through BayREN. These activities are further described in Exhibit B-4.

Since April 2019, the Program team has convened and met with all local energy provider agencies in the Bay Area and invited them to participate. From this engagement, the Participating Agencies have reached an agreement on using this midstream incentive structure as a uniform and simple way to activate the regional market for HPWHs. A regional approach is critical to move a market for HPWHs, because contractors, distributors and manufacturers do not work just within city or county boundaries.

This Agreement establishes the infrastructure to allow the pooling of funds from multiple local energy providers to have one processing system for this incentive. Contractors will be able to apply for incentives online once they complete enrollment in the Program. A contractor can receive an incentive for each installed and functional HPWH. This Program is available for customers of Participating Agencies. A customer verification will be required to release incentive funds to contractors. The focus of the Program will be single family homes but multi-family dwellings may also be eligible.

As described more fully in Exhibit B-2 and B-3, Participating Agencies will provide incentive funds to the Energy Council, who will contract with a Program Provider to distribute those incentives to eligible contractors enrolled in the Program. Contractor eligibility is defined by successful enrollment in the Program, including having an appropriate and valid contractor's license. These funds will be used to buy down the cost of purchasing and installing HPWHs (including education of contractor personnel on the advantages of HPWH and the relevant Building Code requirements applicable to HPWH), and will be provided upon completion of an application verifying the installation of a product from the specifications list with required documentation. The Program design and Program infrastructure set up has been funded through a grant from BAAQMD through the BayREN (ABAG/MTC) to the Energy Council. An administration fee will be added to each incentive for processing incentive funds. The administration fee will cover the Program Provider's cost of processing applications and incentives, including confirming that each application meets the requirements and eligibility, interfacing with contractors to resolve any issues, and fulfilling incentive payments to contractors on a weekly basis for eligible applications. Any supplemental administration fees will also cover activities by the Energy Council or the Program Provider to further support contractor installation and marketing activities for increased HPWH installations. The incentives and administrative fees will be paid from deposits provided by Participating Agencies. The initial funding table in Exhibit B-3 lists Participating Agencies and their contributions and will be updated by the Program Administrator as Participating Agencies and deposit levels change.

Other funds are being used to support complementary efforts and include the BAAQMD grant to BayREN and the Energy Council (Exhibit B-4), funds from BayREN's Codes & Standards program for building department staff trainings, and CEC grant funds awarded to Energy Solutions. These multiple efforts are helping to further prepare the market so that the incentive funds provided by Participating Agencies will have the biggest possible impact.

Exhibit B-2

Heat Pump Water Heater Contractor Scope of Work and Program Details

Each heat pump water heater (HPWH) installed through the Program will be eligible for an incentive provided to the contractor for costs associated with HPWH equipment purchase and installation, and will also require the payment of an administrative fee as described in Exhibit B-3. The administrative fee will cover the processing of the incentive and the administration of the Program by the Program Provider as described in Exhibit B-1.

Participating Agency will be responsible for:

- Reviewing and responding to all materials submitted by Energy Council for review and approval in connection with the Program. No approval in connection with the Program shall be unreasonably withheld.
- Reviewing and paying promptly to the Energy Council invoices for the funding specified in Exhibit B-3.
- Providing a staff member as the Primary Contact for the program, and designating that person to participate in guiding the Program, including providing input on administrative fee revenue spending once minimum Program expenses are met.
- Marketing the Program to eligible customers.
- Advising the Program Administrator of any anticipated changes in Program funding.

The Energy Council will be responsible for:

- Initiating and maintaining this Agreement with all Participating Agencies.
- Convening meetings of Primary Contacts from each Participating Agency to discuss the Program, provide updates, and solicit feedback. The Energy Council will report to the Primary Contacts any changes to the Program.
- Informing Participating Agencies of new policies and programs in the region or state impacting HPWH sales.
- Contracting with and overseeing a Program Provider that will provide administrative services, including handling incentive applications and processing payments. The Scope of Work for the Program Provider will include Program startup (application system configuration and initial round of contractor engagement and enrollment), ongoing Program management (general program administrative activities such as reporting, invoicing, and program meetings), contractor management (ongoing contractor recruitment, enrollment, quality

control, and training) and application processing with incentives paid out weekly. Program Provider will be subject to the insurance and indemnity requirements for contractors specified in the Agreement.

- Holding all funds contributed by Participating Agencies in an account insured by the Federal Deposit Insurance Corporation.
- Ensuring that Program expectations are met and following up with contractors to correct any issues.
- Complying with the scope of work in the BAAQMD Grant, including any amendments or revisions thereto.
- Requiring the Program Provider to report to each Participating Agency on the number of HPWHs installed for that agency monthly. All such reports will be transmitted via express or hand delivery to maintain privacy and security. Each report shall include, at minimum:
 - Full list of water heaters installed including the following data points for each water heater:
 - Account number
 - Customer Name
 - Customer Address
 - Customer Email
 - Water Heater Manufacturer and Specs
 - Total Project Cost
 - Single Family or Multifamily
 - If SF home: CARE rate Y/N,
 - If MF property: Affordable property: Y/N
 - Contractor name and contact information
 - Installation Date
 - Date of Incentive Payment
 - Energy Savings in kWh and therms (estimated through modeling)
 - GHG Savings (estimated through modeling)

This information shall be aggregated into an annual report from the Program Provider to each Participating Agency as described in Section 6 of the Agreement.

- Providing the Participating Agencies with an Annual Report providing, at minimum, the following information on an aggregate basis and excluding any confidential information:
 - Number of water heaters installed in each Participating Agency's jurisdiction;

- Number of each type of water heater including manufacturer and specifications;
- Maximum, minimum, median, and mean project cost;
- Number of HPWH installed with other incentives
- Estimated Energy Savings – kWh (estimated through modeling)
- Estimated GHG Savings (estimated through modeling)

Program Details are not incorporated into the Agreement, but will be provided to all Participating Agencies.

Exhibit B-3

Heat Pump Water Heater Contractor Incentive Program Funding

Each of the participating local energy providers (LEP) (Participating Agencies) will pay an initial amount covering the incentives and administrative fees for the anticipated number of HPWHs to be installed in eligible customers' homes in the Participating Agency's service area.

- Incentive to Contractor per HPWH installed: \$1,000. This incentive is expected to contribute toward the cost of equipment, the cost of installation of the HPWH, any related work to support installation of the HPWH, and costs associated with education of Contractor and Contractor's employees on HPWH technology and relevant building code requirements. In no instance shall the incentive amount exceed the cost of product purchase and installation less the amount of any other rebate or incentive.
- Administrative fee per HPWH installed: \$200 for the Program Provider and Energy Council administration costs described in Exhibit B-2 and not covered by BAAQMD Grant funds. In the event that administrative fee payments result in more revenue than necessary for administration, the excess revenues shall be used for additional Program activities or the administrative fee may be lowered with input from Participating Agencies.
- Cost of setting up the Program and basic contractor outreach shall be covered by the BAAQMD Grant funds through the Energy Council.
- Once 1,000 HPWH units have been installed through this Program, the Energy Council and Participating Agencies will revisit Program expenses and administrative fees. The table below lists the initial amount of funding placed on deposit by each Participating Agency. This table will be updated by the Energy Council as new Participating Agencies join the Program. A Participating Agency may increase the amount of funds on deposit by notifying the Energy Council of its intent to do so and providing the additional funds. The Energy Council will update the table with the new information and share with Primary Contacts quarterly. Funds remaining at termination of this Agreement or a Participating Agency's participation in this Agreement shall be returned in accordance with section 9 of the Agreement.

If the number of installed HPWHs covered by incentive funds for a certain time period in a Participating Agency's territory are reached, then no incentives will be available in that territory unless and until additional funds are provided to cover the additional installations. Participating Agencies can extend funds beyond the specified time period by submitting a letter from the Primary Contact to the Program Administrator.

Initial Funding Table (2020):

Local Energy Provider	Maximum Admin Cost Paid Energy Council	Number of Incentives Provided	Time period beginning and end date
East Bay Community Energy	\$50,000	250 at \$1,000 per incentive	April 1, 2020-June 30, 2021
MCE*	\$50,000	250 at \$1,000 per incentive	April 1, 2020-March 31, 2021

*MCE will provide Energy Council with the incentive funds to provide to approved contractors. MCE will only provide funds for 50 incentives, inclusive of admin fees for those incentives, at any given time. The first set of 50 incentives will be provided to Energy Council at program launch and will be replenished back to 50 incentives when Energy Council only has enough funds for 5 incentives. This process shall repeat until the incentive funds have been depleted during the applicable time period. Energy Council shall return to MCE any Program funds that Energy Council has received from MCE but has not used for incentives under the Program within thirty calendar days of the earlier of (i) the termination of this Agreement or (ii) Program completion.

Exhibit B-4

Heat Pump Water Heater Contractor Incentive Program: Additional Supportive Activities by the Energy Council

The Energy Council received a BAAQMD grant (BAAQMD Grant Number 2018.303) via BayREN/ABAG/MTC, signed in March 2019, and to be completed by November 30, 2020, and with an extension currently requested through September 30, 2021. Under this grant, the Energy Council will complete the following activities, which support the market adoption of HPWHs in the region.

Under the BAAQMD Grant Scope of Work the Energy Council is to cause a consultant to:

- Set up the application processing system and report templates
- Ongoing outreach to contractors to increase number of participating contractors
- Recruitment of contractors through the supply chain (via Manufacturers and Distributors)
- Development of contractor participation agreements
- Validation of contractor credentials
- Review of contractor certifications
- Contractor training coordination through the supply chain
- Contractor training on program participation and marketing of the equipment to home-owners
- Creation of marketing materials, working with the Participating Agencies' marketing depts.
- Quarterly meetings with participating agencies

The BAAQMD grant is also funding the following activities to be completed by the Energy Council staff:

- Developing the Program Design for this Program, including coordination and discussions to produce a strong program. Ongoing leadership for this program. (2019/2020)
- Coordination with BayREN's single family program, Home+. (ongoing)
- Engagement with supply chain actors including Manufacturers and regional Distributors. (ongoing)
- Engagement with stakeholders, such as the Building Decarbonization Coalition, advocates, non-profit organizations, CCAs, Municipal power agencies, IOUs, regulators, and local governments. (ongoing)
- HPWH education targeting homeowners, through a BayREN website, a downloadable flyer, and a costing tool for individuals to evaluate their long-term savings. (Sept 2020)

- Additional program collateral on HPWHs for contractors to recommend HPWHs to customers. (July 2020)
- Coordination with other BAAQMD grantees (SVCE, Marin County, San Jose Clean Energy). (ongoing)
- HPWH Training for Building Department staff at Regional jurisdictions to help with permitting requirements. (ongoing)
- Installations in income-qualified multifamily units of HP technology from gas (water heating, space heating), aligned with the BayREN BAMBE program. We have completed installations for three units, and will complete installations serving more than 250 units. (Dec 2020)
- Cross-promotional materials (brochures and information sheets) for solar customers and solar installers, Electric Vehicle infrastructure sales, and financing programs (such as REEL). (Sept 2020)

Exhibit C

Insurance and Indemnity Requirements

Insurance

1. During the life of this Agreement, Energy Council shall maintain the following minimum insurance and require that contractors to the Energy Council performing work funded by this Agreement, and all incentive recipients maintain the following minimum insurance (as used in this Exhibit, “Insured Parties” means the Participating Agencies, their officers, officials, employees, agents and volunteers, with respect to the Energy Council’s obligation to maintain insurance pursuant to this Agreement and means the Energy Council and Participating Agencies, their officers, officials, employees, agents and volunteers, with respect to contractors to the Energy Council’s and the incentive recipients’ obligation to maintain insurance pursuant to this Agreement ; “Insuring Party” means the Energy Council with respect to its obligation to maintain insurance pursuant to this Agreement and contractors to the Energy Council and incentive recipients with respect their obligation to maintain insurance pursuant to this Agreement).

- A. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be at least \$2,000,000.
- B. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall at least \$1,000,000.
- C. Statutory workers' compensation and employer's liability insurance as required by state law with a limit of at least \$1,000,000 per accident for bodily injury or disease. Neither Insuring Party nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this Agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the Insured Parties.
- D. Professional Errors and Omissions Liability Insurance. The limit of liability shall be at least \$1,000,000. If the policy is written on a “claims made” basis, Insuring Party must maintain required coverage for a period of three years after the expiration of this Agreement. Insuring Party may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three-year period.

Insuring Party shall submit to Insured Parties certificates of insurance and endorsements for the policies listed above. All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. Insured Parties have the right to require Insuring Party’s insurer to provide complete, certified copies of all required insurance policies. Insuring Party shall not cancel, assign, or change any policy of insurance required by this Agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this Agreement except after providing 30 days prior written notice to Insured Parties. If an insurance policy required by this Agreement is unilaterally cancelled or changed by the insurer, the Insuring Party shall immediately provide written notice to the Insured Parties and obtain substitute insurance meeting the requirements of this Agreement. Nothing in this subsection relieves Insuring Party of

its obligation to maintain all insurance required by this Agreement at all times during the term of the Agreement.

2. As to all of the policies of insurance listed above, the following shall apply:
 - A. *Deductibles.* Any deductibles must be declared to and approved by the Insured Parties. At the option of the Insured Parties, either (1) the insurer shall reduce or eliminate such deductibles as respects the Insured Parties; or (2) the Insuring Party shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 - B. *Additional Insureds.* The Insured Parties are to be covered as insureds with the same coverage and limits available to the Insuring Party regarding: liability arising out of activities performed by or on behalf of the Insuring Party; premises owned, occupied or used by the Insuring Party, or automobiles owned, leased, hired or borrowed by the Insuring Party. The coverage shall contain no special limitations on the scope of the protection afforded to the Insured Parties. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Insured Parties. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Insured Parties; the additional insured coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insuring Party; whichever is greater. For any claims related to this Agreement or Program, the Insuring Party's insurance coverage shall be primary insurance as respects the Insured Parties. Any insurance maintained by the Insured Parties shall be excess of the Insuring Party's insurance and shall not contribute with it. Coverage can be provided in the form of an endorsement to the Insuring Party's insurance (at least as broad as ISO Form CG 20 38 04), or as a separate owner's policy, or on the Insured Parties' own form. Additional insured coverage does not apply to errors and omissions insurance. The Insured Parties are to be covered as insureds with the same coverage and limits available to any Insuring Party on the terms set forth above.
 - C. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
 - Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
 - The Insuring Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - D. *Insurer Rating.* Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
 - E. *Umbrella/Excess Insurance.* The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of Insured Parties (if agreed to in a written contract or agreement) before the Insured Parties' own insurance or shall be called upon to protect it as a named insured.
 - F. *Subcontractors.* Insuring Party agrees to include in all subcontracts the same requirements and provisions of this Agreement including the indemnity and insurance

requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Insuring Party shall agree to be bound to Insuring Party and Insured Parties in the same manner and to the same extent as Insuring Party is bound to Insured Parties under this Agreement and Insuring Party shall furnish a copy of this Agreement's insurance and indemnity provisions to all subcontractors. All subcontractors shall provide Insuring Party with valid certificates of insurance and the required endorsements included in the Agreement prior to commencement of any work and Insuring Party will provide proof of compliance to the Insured Parties.

3. Insuring Party hereby grants to Insured Parties a waiver of any right to subrogation which any insurer of Insuring Party may acquire against Insured Parties by virtue of the payment of any loss under such insurance. Insuring Party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether Insured Parties have received a waiver of subrogation endorsement from the insurer.

4. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Insuring Party shall immediately notify Insured Parties by telephone. Insuring Party shall promptly submit to Insured Parties a written report, in such form as may be required by Insured Parties of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Insuring Party's subcontractor, if any; (3) name and address of Insuring Party's liability insurance carrier; and (4) a detailed description of accident and whether any of Insured Parties' equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this Agreement.

Notwithstanding the above, public agencies may fulfill the insurance requirements through a joint powers authority, or similar entity, formed for the purpose of providing self-insurance to public entities.

Indemnity

All contracts awarded for administration of the Program and agreements for incentive payments shall include the following indemnity requirement:

To the fullest extent permitted by law, Contractor [or incentive recipient, as applicable] shall indemnify, defend (with counsel agreed to by Energy Council), and hold harmless, jointly and severally the Energy Council, the Participating Agencies [to be defined in the contract and incentive agreement consistent with this Agreement], and their officers, officials, agents, employees, and volunteers (collectively and/or individually "Indemnified Parties") from and against any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this Agreement or participation in the Program by Contractor [or incentive recipient, as applicable] or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement or required by the Program, except such

loss or damage which was caused by the sole negligence or sole willful misconduct of the Energy Council or the Participating Agencies. The duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor [or incentive recipient, as applicable] are responsible for the claim does not relieve Contractor [or incentive recipient, as applicable] from its separate and distinct obligation to defend as stated herein.

-End of Exhibit C-

1192712.15