

**AMENDED FUNDING AND IMPLEMENTATION AGREEMENT FOR 2015**  
**- BAYREN PROGRAM IMPLEMENTATION PLAN-**  
ASSOCIATION OF BAY AREA GOVERNMENT AND COUNTY OF SAN MATEO

This BayREN Member: County of San Mateo  
Address: 400 County Center  
Redwood City, CA 94063

Contact: Stephen Stolte  
Phone: (650) 363-4133  
Email: sstolte@smcgov.org

Effective Date:

**Background**

- A. BayREN. The San Francisco Bay Area Regional Energy Network (BayREN) consists of ten (10) public entities: Association of Bay Area Governments (ABAG), City and County of San Francisco (SF), Energy Council (StopWaste.org), County of Contra Costa (Contra Costa), County of Marin (Marin), County of Napa (Napa), County of San Mateo (San Mateo), County of Santa Clara Santa Clara), City of Suisun City, on behalf of Solano County, (City), and Sonoma County Regional Climate Protection Authority (SCRCPA) (referenced collectively or generically as Members) that have entered into the Revised and Restated Memorandum of Understanding (Restated and Revised MOU) in substantially the form attached and marked Appendix A for 2015.
- B. CPUC Decision. On November 24, 2014 the California Public Utilities Commission (CPUC) issued D.14-10-046 (2015 Decision) approving a BayREN Program Implementation Plan for 2015 (2015 PIP) and budget to fund implementation of the 2015 PIP (2015 Budget). The CPUC has the authority to modify the 2015 PIP through its official proceedings. The Decision also directed Pacific Gas & Electric Company (PG&E) to enter into a contract with BayREN to provide funding for the 2015 PIP. The 2015 Decision can be found here: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M129/K228/129228024.pdf>
- C. Initial Implementation and Funding Agreement. ABAG and County of San Mateo entered into an Implementation and Funding Agreement to implement and fund a portion of the BayREN Program Implementation Plan for 2013-14 (Initial Agreement). The Initial Agreement was amended to reflect changes in scope and/or budget between the effective date of the Initial Agreement and December 31, 12014 but the body of the Initial Agreement was not amended. The body of the Initial Agreement will be amended by this agreement (2015 Agreement).

- D. Funding Agreement. Effective December 12, 2014, ABAG, on behalf of BayREN, and PG&E entered into an agreement denominated under PG&E's nomenclature as Change Order No. 2 to Contract No. 4400007460, including Master Service Agreement (MSA) No. 4400007460 (collectively, 2015 Funding Agreement) which is attached and marked Appendix B for 2015.

## TERMS AND CONDITIONS

### 1. Definitions.

- (a) 'Assigned 2015 PIP' means the tasks and requirements of the 2015 PIP that are initially assigned to in this 2015 Agreement as it may be modified from time to time under this Agreement.
- (b) '2015 Allocated Budget' means the funds available under the 2015 Funding Agreement that are initially allocated to County of San Mateo in this Agreement for implementing the Assigned 2015 PIP as it may be modified from time to time under this 2015 Agreement.
- (c) 'Incentives' means the funds available to pay property owners or contractors upon successful completion of an approved energy efficiency that meets the requirements of the 2015 PIP.
- (d) 'Guarantees' means the funds available for allocation to lending institutions as security against defaults on eligible energy efficiency loans pursuant to the 2015 PIP.
- (e) 'Revolving Loans' means funds available as loans to property owners to be used to pay for approved energy efficiency retrofits, and then repaid to ABAG to make subsequent loans pursuant to the 2015 PIP.

2. 2015 PIP Implementation. All Members, including County of San Mateo, agree that the primary purpose of this 2015 Agreement is to successfully implement the 2015 PIP, that the coordinated and collaborative process set forth in the Restated and Revised MOU is the agreed upon means for the Members to do so and that strategic management of the implementation is a critical part of the approach.

- (a) As of the Effective Date, the Members, including County of San Mateo, have agreed on the initial overall assignment of tasks and requirements of the 2015 PIP, and the allocation of the associated funding, to individual Members including County of San Mateo, set forth in Attachment 1 for 2015.
- (b) As of the Effective Date, the Members, including County of San Mateo, have agreed on the initial assignment of tasks and requirements for individual programs in the 2015 PIP, and the allocation of the associated funding, to individual Members. If County of San Mateo has been assigned tasks, requirements and budgets for a particular program, then an attachment describing the corresponding scope of work and budget will be attached to this 2015 Agreement and numbered as follows:
  - (1) Single Family Scope of Work and Budget, Attachment 1A for 2015
  - (2) Multifamily Scope of Work and Budget, Attachment 1B for 2015
  - (3) Codes and Standards Scope of Work and Budget, Attachment 1C for 2015
  - (4) Commercial PACE (Property Assessed Clean Energy ) Scope of Work and Budget, Attachment 1D for 2015
  - (5) Pay-as-you-Save Scope of Work and Budget, Attachment 1E for 2015

- (6) Multifamily Capital Advance Program Scope of Work and Budget, Attachment 1F for 2015
- (c) The protocols for draw down of the capital funds for the Multifamily Capital Advance Program are set forth in Attachment 2 for 2015.
- (d) The maximum hourly rates for each labor category for County of San Mateo's employees performing under this 2015 Agreement are set forth in Attachment 3 for 2015. County of San Mateo may invoice for the actual employee hours expended in performing under this 2015 Agreement at an hourly rate up to the maximum rate.
- (e) ) County of San Mateo acknowledges that:
  - (1) other Members, except ABAG, are third party beneficiaries of this 2015 Agreement;
  - (2) ABAG and each of the other Members will enter into an agreement comparable to this 2015 Agreement whereby each other Member, including ABAG, will accept the initial assignment of tasks and requirements of the 2015 PIP and the associated allocation of funding set forth in Attachment 1 for 2015 and Attachments 1A through 1F, if any, and
  - (3) County of San Mateo is a third party beneficiary of each agreement described in subsection (b)(2).
- (f) As of the Effective Date, County of San Mateo is a signatory to the Restated and Revised MOU. County of San Mateo intends to participate in the activities conducted under the Restated and Revised MOU throughout the term of this 2015 Agreement.

3. Changes to 2015 PIP Implementation. Under the Restated and Revised MOU, County of San Mateo will work with the other Members to coordinate and collaborate on implementation of the 2015 PIP and to monitor 2015 PIP implementation. County of San Mateo agrees that the Members may, in accordance with the decision making process then in effect under the Restated and Revised MOU, make one or more changes to Attachments 1 for 2015 and/or Attachment 2 for 2015.

4. Implementation Process. County of San Mateo will implement the Assigned 2015 PIP in conformity with this 2015 Agreement and the 2015 Funding Agreement, including without limitation, the following provisions of the 2015 Funding Agreement:

- (a) applicable provisions of Exhibit A, Contingency Provisions, to the General Conditions,
- (b) section 2, Program Requirements, of the Specific Conditions,
- (c) section 6, Approval of Marketing Materials and Media that Include PG&E Name, Trademark or Logo, of the Specific Conditions, and
- (d) section 7, Substantiation of Claims Using PG&E's Logo, of the Specific Conditions.

5. Maximum Budget and Allocated Budget.

- (a) The initial Allocated 2015 Budget is Three-Hundred and Thirty-Three-Thousand and Seven-Hundred and Fifty-Nine Dollars (\$333,759) as described in Attachment 1 for 2015.

- (b) To ensure that the Assigned 2015 PIP and Allocated 2015 Budget can be adjusted pursuant to this 2015 Agreement, the Maximum Budget that can be paid to County of San Mateo for implementing the Assigned 2015 PIP is set at One-Million Dollars (\$1,000,000).
- (c) Draws on Incentives, Guarantees and Revolving Loans funds are not included in the Maximum or Allocated Budget.

6. Reimbursement Process.

- (a) ABAG will reimburse County of San Mateo based on time expended in implementing the Assigned 2015 PIP. The amount of the reimbursement will be based on the invoices submitted by County of San Mateo in accordance with subsection (c). County of San Mateo will not charge, and ABAG will not pay, any additional sums for work performed, except for allowed reimbursable costs.
- (b) County of San Mateo will be paid in arrears, based upon invoices submitted by County of San Mateo to ABAG. County of San Mateo will submit invoices for payment no more frequently than once monthly. ABAG will promptly review County of San Mateo's invoices, approve or disapprove them for payment and submit approved invoices to PG&E. ABAG will pay County of San Mateo within ten (10) working days after receipt of payment from PG&E. Each invoice shall specify the hourly rates for the individuals, or categories of individuals, as the case may be, that are listed in Attachment 3 for 2015. The invoice will separately itemize reimbursable costs and other allowable charges with supporting documentation attached.

7. Assurances and Warranties Regarding Implementation of 2015 PIP. County of San Mateo acknowledges that under the 2015 Funding Agreement, ABAG provided PG&E certain assurances and warranties regarding implementation of the 2015 PIP and that such assurance and warranties rest upon the actions of individual Members' implementation of their assigned tasks and requirements. County of San Mateo acknowledges that ABAG entered into the 2015 Funding Agreement and this Agreement and that each of the Members entered into an agreement comparable to this Agreement in reliance on County of San Mateo's representations and warranties.

- (a) County of San Mateo represents and warrants to each of the other Members, including ABAG, that it will implement, or cause to be implemented, the Assigned 2015 PIP in conformity with the Decision and all applicable Federal, State, CPUC) and local statutes, regulations and administrative decisions, rulings and guidelines.
- (b) County of San Mateo warrants to each of the other Members, including ABAG, that it will implement, or cause to be implemented, the Assigned 2015 PIP with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Assigned 2015 PIP is implemented so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this 2015 Agreement and related specifications.

8. Infringement Protection. County of San Mateo represents to each of the other Members, including ABAG, that the material to be prepared under this 2015 Agreement will not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. County of San Mateo agrees to indemnify and hold each of the other Members, the CPUC and PG&E (for the purposes of this section only, Indemnitees) harmless from and against any and all liabilities, costs and damages arising out of any such infringement, and from any suit, demand or claim made against Indemnitees alleging any such infringement or violation. In addition to the foregoing, if there is such a suit, demand or claim, County of San Mateo agrees, as soon as possible, to either procure for the affected Indemnitee(s) the right to continue using the material, replace the material with non-infringing material or modify it so it becomes noninfringing; provided, however that the replaced or modified material shall be equal to that contracted for hereunder and satisfactory to the affected Indemnitee(s). County of San Mateo further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim.

9. Indemnification. All Members, including County of San Mateo, acknowledge that under the 2015 Funding Agreement ABAG has agreed, on behalf of the Members, to indemnify, hold harmless and defend the CPUC and PG&E. In recognition of this obligation, County of San Mateo shall indemnify, hold harmless and defend the CPUC, PG&E and their respective members, affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees (for the purposes of this section only, Indemnitees), from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any:

(a) injury to or death of persons

(b) injury to property;

(c) violation of local, state, or federal common law, statute or regulation, including but not limited to environmental laws or regulations;

(d) strict liability imposed by any law or regulation;

so long as such injury, violation, or strict liability (as set forth in subsections (a) - (d) above) arises from County of San Mateo's performance of, or failure to perform, this Agreement, however caused excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the sole negligence or willful misconduct of the Indemnitees.

10. Termination. This Agreement will terminate effective December 31, 2015 or the date the 2015 Funding Agreement is terminated, whichever occurs earlier.

11. Records/Audit. County of San Mateo shall keep complete and accurate books and records of all financial aspects of its relationship with ABAG in accordance with generally-accepted accounting principles. County of San Mateo shall permit authorized representatives of ABAG and/or PG&E or the CPUC to inspect, copy, and audit all data and records of County of San Mateo relating to its performance of services under this Agreement. County of San Mateo shall

maintain all such data and records in accordance with the requirement of the 2015 Funding Agreement.

12. Headings. The descriptive headings used in this 2015 Agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

13. Governing Law. This 2015 Agreement will be construed and enforced in accordance with the laws of the State of California.

14. Severability. Should any part of this 2015 Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this 2015 Agreement, which shall continue in full force and effect; provided that, the remainder of this 2015 Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, County of San Mateo 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.

Dated: \_\_\_\_\_

\_\_\_\_\_  
President, Board of Supervisors, San Mateo  
County

Approved as to Form:

Attest:

\_\_\_\_\_  
Brian Wong, Deputy County Counsel

\_\_\_\_\_  
John L. Maltbie, County Manager, Clerk of  
the Board

Association of Bay Area Governments

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ezra Rapport, Executive Director

Approved as to form:

\_\_\_\_\_  
Kenneth K. Moy, Legal Counsel