

FUNDING AND IMPLEMENTATION AGREEMENT FOR 2019
- BAYREN PROGRAM IMPLEMENTATION PLAN-
ASSOCIATION OF BAY AREA GOVERNMENTS AND COUNTY OF SAN MATEO

- A. Parties. The parties to this Agreement (Agreement) are the Association of Bay Area Governments (ABAG), whose address is 375 Beale Street, Suite 700, San Francisco, CA 94105, and the County of San Mateo, whose address is Office of Sustainability, 455 County Center, 4th Floor, Redwood City, CA 94063.
- B. 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), County of Contra Costa (Contra Costa), County of Marin (Marin), County of San Mateo (San Mateo), County of San Mateo (San Mateo), County of San Mateo (San Mateo), County of Solano, (Solano), and Regional Climate Protection Authority (“RCPA”), on behalf of Sonoma County, (referenced collectively or generically as Members) that have entered into Restated and Revised Memorandum of Understanding with regards to the San Francisco Bay Area Regional Energy Network (MOU).
- C. CPUC Decision. On October 28, 2016 the California Public Utilities Commission (CPUC) issued D.15-10-028 (2016 Decision) approving, among other things, budget to fund implementation of activities through 2025. The budget was reaffirmed by the CPUC in D.18-05-041, issued on June 5, 2018. These Decision also directed Pacific Gas & Electric Company (PG&E) to enter into an annual contract with ABAG to provide funding for the activities identified in the existing and revised BayREN Program Implementation Plans (PIP).
- D. ABAG-PG&E Funding Agreement. Effective January 1, 2017, ABAG, on behalf of BayREN, and PG&E entered into an agreement denominated under PG&E’s nomenclature as Contract Work Authorization No. 2501322994 and Contract Work Authorization No. 2501322995, to Contract No. 4400007460, including Master Service Agreement (MSA) No. 4400007460 (collectively, 2017 Funding Agreement). Contract Work Authorization No.C6252, CO 6 provides BayREN funding through 2019.

TERMS AND CONDITIONS

1. Definitions.

- (a) ‘Assigned 2019 Scope of Work (SOW)’ means the tasks and requirements of the PIP that are initially assigned to County of San Mateo in this Agreement as it may be modified from time to time under this Agreement.
- (b) ‘2019 Allocated Budget’ means the funds available under the Agreement that are initially allocated to County of San Mateo in this Agreement for implementing the Assigned 2019 SOW as it may be modified from time to time under this Agreement.
- (c) ‘Incentives’ means the funds available to pay property owners or contractors upon successful completion of an approved energy efficiency project that meets the requirements of the PIP.
- (d) ‘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 PIP.

2. PIP Implementation. All Members, including County of San Mateo, agree that the primary purpose of this Agreement is to successfully implement the PIP that the coordinated and collaborative process set forth in the Restated and Revised MOU, executed by all BayREN Members in 2015, 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) The Members, including County of San Mateo, have agreed on the initial overall assignment of tasks and requirements of the PIP, and the allocation of the associated funding, to individual Members including County of San Mateo, set forth in Attachment 1 for 2019.
- (b) The Members, including County of San Mateo, have agreed on the initial assignment of tasks and requirements for individual programs in all the 2019 SOWs, and the allocation of the associated funding, to individual Members. County of San Mateo has been assigned tasks, requirements and budgets for a particular program. An attachment describing the corresponding scope of work and budget is attached to this Agreement and numbered as follows:
 - (1) Single Family Scope of Work and Budget, Attachment 1A for 2019
 - (2) Multifamily Scope of Work and Budget, Attachment 1B for 2019
 - (3) Codes and Standards Scope of Work and Budget, Attachment 1C for 2019
 - (4) Commercial Scope of Work and Budget, Attachment 1D for 2019
 - (5) Water Bill Savings Program Scope of Work and Budget, Attachment 1E for 2019
 - (6) Green Labeling Program Scope of Work and Budget, Attachment 1F for 2019
- (c) The maximum hourly rates for each labor category for County of San Mateo’s employees performing under this Agreement are set forth in Attachment 2 for 2019. County of San Mateo may invoice for the actual employee hours expended in performing under this Agreement at an hourly rate up to the maximum rate.
- (d) County of San Mateo acknowledges that:
 - (1) Other Members, except ABAG, are third party beneficiaries of this Agreement;

(2) ABAG and each of the other Members will enter into an agreement comparable to this Agreement whereby each other Member, including ABAG, will accept the initial assignment of tasks and requirements of the 2019 PIP and the associated allocation of funding set forth in Attachment 1 for 2019 and Attachment 1A through Attachment 1F, if any, and

(e) 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 Agreement.

3. Maximum Budget and Allocated Budget.

(a) The initial Allocated 2019 Budget for County of San Mateo is One-Hundred Seventy-Nine Thousand, One Dollars (\$179,001) as described in Attachment 1.

(b) Draws on Incentives, Guarantees and Revolving Loans funds are not included in the Maximum or Allocated Budget.

4. Reimbursement Process.

(a) Pursuant to contract for services dated May 30, 2017, the Metropolitan Transportation Commission (MTC), will reimburse County of San Mateo based on time expended in implementing the 2019 SOWs. The amount of the reimbursement will be based on the invoices submitted by County of San Mateo. County of San Mateo will not charge, and MTC 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 MTC. County of San Mateo will submit invoices for payment no more frequently than once monthly. MTC will promptly review County of San Mateo's invoices, approve or disapprove them for payment and submit approved invoices to PG&E. MTC 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 2 for 2019. The invoice will separately itemize reimbursable costs and other allowable charges with supporting documentation attached.

5. Assurances and Warranties Regarding Implementation of PIP. County of San Mateo acknowledges that under the 2019 Funding Agreement, ABAG provided PG&E certain assurances and warranties regarding implementation of the 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 2019 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 2019 SOWs 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 2019 SOW 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 2019 SOW is implemented so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Agreement and related specifications.

6. Infringement Protection. County of San Mateo represents to each of the other Members, including ABAG, that the material to be prepared under this 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.

6. Indemnification. All Members, including County of San Mateo, acknowledge that under the 2019 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 ABAG, CPUC, PG&E and their respective members, affiliates, subsidiaries, parent company, commissioners, 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.

8. Termination. This Agreement will terminate effective December 31, 2019 or the date the 2019 Funding Agreement is terminated, whichever occurs earlier.

9. Records/Audit. County of San Mateo shall keep complete and accurate books and records of all financial aspects of its relationship with MTC in accordance with generally-accepted accounting principles. County of San Mateo shall permit authorized representatives of MTC 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 2019 Funding Agreement.

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

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

12. Severability. Should any part of this 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 Agreement, which shall continue in full force and effect; provided that, the remainder of this 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.

County of San Mateo
A Political subdivision of the State of
California

Dated: _____

Carole Groom
President, Board of Supervisors

Attest:

Clerk of the Board of Supervisors

Dated: _____

Approved as to form and legality:

County Counsel

Association of Bay Area Governments

Dated: _____

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

Approved as to form:

Adrienne D. Weil
Metropolitan Transportation Commission
General Counsel

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Attachment 2 for 2019
County of San Mateo
January 1, 2019 to December 31, 2019

Organization	Classification	Not to exceed billing rate (\$/hr)
County of San Mateo	Assistant Director	\$141.57
“	Program Manager	\$100.53
“	Senior Sustainability Specialist	\$90.53
“	Resource Conservation Specialist III	\$84.98
“	Resource Conservation Specialist II	\$79.84
“	Resource Conservation Specialist I	\$74.00
“	Fellow II	\$40.98
“	Fellow I	\$31.36

*** These are fully loaded rates including salary, benefits and overhead.