

**FUNDING AND IMPLEMENTATION AGREEMENT FOR 2018**  
**- BAYREN PROGRAM IMPLEMENTATION PLAN-**  
ASSOCIATION OF BAY AREA GOVERNMENTS AND COUNTY OF SANTA CLARA

This BayREN Member: County of Santa Clara  
Address: Office of the County Executive  
Office of Sustainability and Climate Action  
70 W. Hedding Street  
Eleventh Floor  
San Jose, CA 95110

Contact: Natalie DeLeon  
Phone: (408) 993-4763  
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Effective Date: January 1, 2018

**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), 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), 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).
- B. 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 Decision also directed Pacific Gas & Electric Company (PG&E) to enter into an annual contract with BayREN to provide funding for the activities identified in the existing Program Implementation Plan (PIP).
- C. 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), attached as Appendix A for 2018. The agreement provides for BayREN funding through 2019.

## TERMS AND CONDITIONS

### 1. Definitions.

- (a) 'Assigned 2018 Scope of Work (SOW)' means the tasks and requirements of the PIP that are initially assigned to County of Santa Clara in this 2018 Agreement as it may be modified from time to time under this Agreement.
- (b) '2018 Allocated Budget' means the funds available under the 2018 Funding Agreement that are initially allocated to County of Santa Clara in this Agreement for implementing the Assigned 2018 SOW as it may be modified from time to time under this 2018 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) 'Guarantees' means the funds available for allocation to lending institutions as security against defaults on eligible energy efficiency loans pursuant to the 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 PIP.

2. PIP Implementation. All Members, including County of Santa Clara, agree that the primary purpose of this 2018 Agreement is to successfully implement the 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 Santa Clara, 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 Santa Clara, set forth in Attachment 1 for 2018.
- (b) As of the Effective Date, the Members, including County of Santa Clara, have agreed on the initial assignment of tasks and requirements for individual programs in all the 2018 SOWs, and the allocation of the associated funding, to individual Members. If County of Santa Clara 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 2018 Agreement and numbered as follows:
  - (1) Single Family Scope of Work and Budget, Attachment 1A for 2018
  - (2) Multifamily Scope of Work and Budget, Attachment 1B for 2018
  - (3) Codes and Standards Scope of Work and Budget, Attachment 1C for 2018

- (4) Commercial PACE (Property Assessed Clean Energy) Scope of Work and Budget, Attachment 1D for 2018
- (5) Pay-as-you-Save Scope of Work and Budget, Attachment 1E for 2018
- (c) The maximum hourly rates for each labor category for County of Santa Clara's employees performing under this 2018 Agreement are set forth in Attachment 2 for 2018. County of Santa Clara may invoice for the actual employee hours expended in performing under this 2018 Agreement at an hourly rate up to the maximum rate.
- (d) County of Santa Clara acknowledges that:
  - (1) Other Members, except ABAG, are third party beneficiaries of this 2018 Agreement;
  - (2) ABAG and each of the other Members will enter into an agreement comparable to this 2018 Agreement whereby each other Member, including ABAG, will accept the initial assignment of tasks and requirements of the 2018 PIP and the associated allocation of funding set forth in Attachment 1 for 2018 and Attachment 1A through Attachment 1F, if any, and
  - (3) County of Santa Clara is a third party beneficiary of each agreement described in subsection (b)(2).
- (e) As of the Effective Date, County of Santa Clara is a signatory to the Restated and Revised MOU. County of Santa Clara intends to participate in the activities conducted under the Restated and Revised MOU throughout the term of this 2018 Agreement.

3. Changes to PIP Implementation. Under the Restated and Revised MOU, County of Santa Clara will work with the other Members to coordinate and collaborate on implementation of the PIP and to monitor PIP implementation.

4. Implementation Process. County of Santa Clara will implement the 2018 SOW in conformity with this 2018 Agreement and the 2018 Funding Agreement, including without limitation, the following provisions of the 2018 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 2018 Budget is Two-Hundred and Thirty-Five Thousand and Four-Hundred and Sixty-Eight Dollars (\$235,468) as described in Attachment 1.

- (b) 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 Santa Clara based on time expended in implementing the 2018 SOW. The amount of the reimbursement will be based on the invoices submitted by County of Santa Clara in accordance with subsection (c). County of Santa Clara will not charge, and ABAG will not pay, any additional sums for work performed, except for allowed reimbursable costs.
- (b) County of Santa Clara will be paid in arrears, based upon invoices submitted by County of Santa Clara to ABAG. County of Santa Clara will submit invoices for payment no more frequently than once monthly. ABAG will promptly review County of Santa Clara's invoices, approve or disapprove them for payment and submit approved invoices to PG&E. ABAG will pay County of Santa Clara 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 2018. The invoice will separately itemize reimbursable costs and other allowable charges with supporting documentation attached.

7. Assurances and Warranties Regarding Implementation of PIP. County of Santa Clara acknowledges that under the 2017 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 Santa Clara acknowledges that ABAG entered into the 2017 Funding Agreement and this Agreement and that each of the Members entered into an agreement comparable to this Agreement in reliance on County of Santa Clara's representations and warranties.

- (a) County of Santa Clara represents and warrants to each of the other Members, including ABAG, that it will implement, or cause to be implemented, the 2018 SOW in conformity with the Decision and all applicable Federal, State (CPUC), and local statutes, regulations and administrative decisions, rulings and guidelines.
- (b) County of Santa Clara warrants to each of the other Members, including ABAG, that it will implement, or cause to be implemented, the 2018 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 2018 SOW is implemented so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this 2018 Agreement and related specifications.

8. Infringement Protection. County of Santa Clara represents to each of the other Members, including ABAG, that the material to be prepared under this 2018 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 Santa Clara 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 Santa Clara 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 Santa Clara further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim.

9. Indemnification. All Members, including County of Santa Clara, acknowledge that under the 2017 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 Santa Clara 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 Santa Clara'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, 2018 or the date the 2017 Funding Agreement is terminated, whichever occurs earlier.

11. Records/Audit. County of Santa Clara 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 Santa Clara 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 Santa Clara relating to its performance of services under this Agreement. County of Santa Clara shall maintain all such data and records in accordance with the requirement of the 2017 Funding Agreement.

12. Headings. The descriptive headings used in this 2018 Agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

13. Governing Law. This 2018 Agreement will be construed and enforced in accordance with the laws of the State of California.

14. Severability. Should any part of this 2018 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 2018 Agreement, which shall continue in full force and effect; provided that, the remainder of this 2018 Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

15. Counterparts. This Agreement may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both Parties.

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16. Construction. This Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

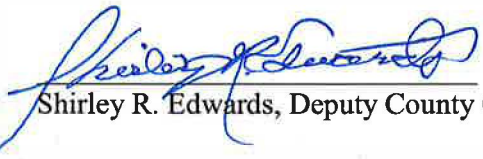
IN WITNESS WHEREOF, County of Santa Clara has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

**COUNTY OF SANTA CLARA**, a political subdivision of the State of California

\_\_\_\_\_  
S. Joseph Simitian, President  
Board of Supervisors  
Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Megan Doyle,  
Clerk of the Board of Supervisors  
Dated: \_\_\_\_\_

Approved as to form and legality:  
  
Shirley R. Edwards, Deputy County Counsel

**ASSOCIATION OF BAY AREA GOVERNMENTS**

\_\_\_\_\_  
Steve Heminger, Executive Director,  
Metropolitan Transportation Commission  
(Acting pursuant to the Contract for Services dated May 30, 2017)  
Dated: \_\_\_\_\_

Approved as to form:  
  
\_\_\_\_\_  
Adrienne D. Weil, General Counsel,  
Metropolitan Transportation Commission

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