

RESTATED AND REVISED MEMORANDUM OF UNDERSTANDING
WITH REGARDS TO THE
SAN FRANCISCO BAY AREA REGIONAL ENERGY NETWORK

This Restated and Revised Memorandum of Understanding (“MOU”) is entered into by and between the following participating members:

Association of Bay Area Governments
City and County of San Francisco
Energy Council (on behalf of Alameda County)
County of Contra Costa
County of Marin
County of Napa
County of San Mateo
County of Santa Clara
City of Suisun City (on behalf of Solano County)
Sonoma County Regional Climate Protection Authority

A. Purpose. The purpose of this MOU is to define and formalize the working relationship among regional and local agencies with expertise and experience in the design and implementation of regional and local energy and sustainability programs within the San Francisco Bay region. This MOU defines the shared goals and objectives of these local and regional agencies working collaboratively in BayREN (Members) and establishes the necessary administrative and governance structure to promote a cooperative relationship and for ensuring successful implementation of the BayREN activities.

B. Background.

On November 8, 2012 the California Public Utilities Commission (CPUC) approved the statewide energy efficiency budgets and programs for calendar years 2013-2014 (D.12-11-015). This decision included approval of identified portions of the BayREN Program Implementation Plan (PIP) and budget, as well as identified roles and responsibilities for all approved regional energy networks and investor owned utilities (IOUs). Soon thereafter, the Members entered into the prior Memorandum of Understanding with Regards to the San Francisco Bay Area Regional Energy Network (Prior MOU). On behalf of BayREN ABAG entered into a contract with PG&E to receive and disburse funding for implementation of the approved 2013-14 PIP. Each Member, except ABAG, entered into an Implementation Agreement whereby the Member received funding to undertake activities to implement a component of the approved PIP.

The Members have been carrying out their responsibilities under the Prior MOU and the Implementation Agreements. At its October 16, 2014 meeting, the CPUC adopted D.14-10-046 which included approval of a 2015 BayREN PIP, a rollover of unspent funds from the 2012-14 BayREN PIP to the 2015 BayREN PIP, and additional funding for the 2015 BayREN PIP. At approximately the same time, the Coordinating Committee created under the Prior MOU decided to make refinements to the governance structure of BayREN and the process for managing the Implementation Agreements. This MOU documents these refinements.

C. Proposed Activities. The Members will undertake the following activities:

1. Coordinate with and support the efforts of the BayREN Administrator (described below) related to ongoing implementation of the 2013-14 and 2015 BayREN PIPs, applications for future BayREN PIPs and any other proceedings before the CPUC or other regulatory bodies..
2. Members with programmatic responsibilities will carry out such responsibilities pursuant to the contract or agreement between PG&E or CPUC and ABAG, and the contract(s) or agreement(s) between or among any Member(s) and ABAG.

D. Responsibilities. Each Member will have the following responsibilities

1. Assign a representative to the Coordinating Committee (renamed the Coordinating Circle) and participate in meetings thereof.
2. Coordinate activities with all other local government jurisdictions within the geographical boundaries of the county which the Member represents.
3. Coordinate with any local government energy efficiency program within the geographical boundaries of the county which the Member represents. In particular, coordinate with Local Government Partnership (LGP) programs administered by PG&E.

E. Structure and Governance. For ease of formation and administration and to maintain flexibility, BayREN is structured as an unincorporated association of local public entities whose membership benefits and responsibilities are set forth in this MOU. The Members agree that this MOU is independent of any other contract(s) or agreement(s) between PG&E or CPUC and ABAG, or the contract(s) or agreement(s) between or among any Member(s) and ABAG that are promulgated to implement the approved PIP.

1. BayREN activities will be established and supervised by a Coordinating Circle made up of one representative from each Member. Every Member will appoint as its representative(s) to the Coordinating Circle a staff person with expertise and experience in energy-related project management and implementation. Each representative to the Coordinating Circle is entitled to a single, unweighted vote. A majority of the Coordinating Circle constitutes a quorum. Except as otherwise required in this MOU, the Coordinating Circle may take action by a majority vote of those present at a meeting.

Every Member also has the right, but not the obligation, to appoint an alternate to the Coordinating Circle. The alternate may attend any meeting of the Coordinating Circle. However, the alternate is not included in the quorum count, is not entitled to vote and may not participate in the deliberations of the Coordinating Circle, except in the absence of the representative for whom he/she is an alternate.

The Coordinating Circle has the authority to appoint a Lead Link for each approved program in an approved PIP.

2. The Lead Link will have the following powers with respect to the program for which it is Lead Link subject only to the applicable BayREN PIP, regulatory requirements, the funding agreement with PG&E, and the initial budget allocated for the Program and other directions adopted by the Coordinating Circle:

1. power to allocate resources among Members (Budget),
2. assign programmatic roles for each Member (Implementation Plan),
3. revise the Budget and/or Implementation Plan,
4. assess and define priorities for the program, and
5. define and assign metrics for the program.

The Coordinating Circle has the authority to appoint the BayREN Administrator who will be charged with overall BayREN administration and with the following powers subject only to the applicable BayREN PIP, regulatory requirements, the funding agreement with PG&E, and the initial budget allocated for the BayREN administration and other directions adopted by the Coordinating Circle:

- (a) managing regional administrative activities and budget,
- (b) speaking on behalf of BayREN (distinguished from program) in state and regional contexts,
- (c) administering overall BayREN budget, including fund shifts among programs and members,
- (d) making recommendations to the Coordinating Circle related to BayREN budget and other pertinent information as necessary,
- (e) implementing decisions of Coordinating Circle,
- (f) coordinating with other RENs,
- (g) communicating meeting outcomes with state agencies, coordinating and working groups, and other convened processes that impact or affect the BayREN or energy programs, and
- (h) manage the contracts between it and the Members or consultants implementing the applicable BayREN PIP, provided that the BayREN Administrator consults with the applicable Lead Link, if any.

3. Each Lead Link will convene a Program Circle comprised of a Rep Link and representatives from Members which volunteer to participate in said Program Circle. The Program Circle will provide input to the Lead Link on the Budget and Implementation Plan.

F. Member Resources and Funding. The Members acknowledge that BayREN requires their investment of resources for it to be effective. Each Member will:

1. Assign staff to act as its representative to the Coordinating Circle.
2. In addition, from time to time, the Coordinating Circle may decide that Member funds are necessary to carry out its mission. The allocation of the required funding will be determined on a case by case basis. Members agree to make a good faith effort to secure payment of their allocated portion and acknowledge that failure to pay may result in a request that the Member withdraw from this MOU.

G. Hold Harmless and Liability; Incidental and Consequential Damages. Each Member shall indemnify and hold harmless the other Members from the indemnifying Member's share of liability, as determined by a court of law, for any and all claims, costs and liability for any damage caused by the negligence or willful misconduct of the indemnifying Member and its officers, employees or agents in the indemnifying Member's performance under this MOU. The obligations of the indemnifying Member under this section shall not apply to any claim, cost or liability caused by the negligence or willful misconduct of any other member. Under no circumstances shall the indemnifying Member be liable to any other Member or any other person or entity for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to performance of the indemnifying Member under this MOU.

H. Withdrawal and Termination. This MOU will continue until terminated by majority vote of the Coordinating Circle, but Members may withdraw from BayREN on 30 days' notice to other Members.

I. New Members. New Members may be added by majority vote of the current Members.

J. Amendments. This MOU may be amended by a written agreement executed by the Members in the same manner as this MOU.

K. Counterparts. This MOU may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

L. Effective Date. This MOU is effective upon the date a minimum of four Members have executed the MOU.

IN WITNESS WHEREOF, the Members have caused this Memorandum of Understanding to be effective with the approval of their legally authorized representatives on the dates indicated below.

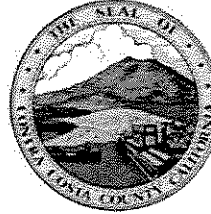
CONTRA COSTA COUNTY

By: Jason Crapo Date: 1/8/15
Jason Crapo, Deputy Director
Building Inspection

Approved as to form:

By: [Signature] Date: 1/7/2015
Deputy County Counsel

Copy



Contra
Costa
County

To: Board of Supervisors

From: Catherine Kutsuris, Conservation & Development

Date: January 8, 2013

Subject: Memorandum of Understanding for the Bay Area Regional Energy Network Program

RECOMMENDATION(S):

APPROVE and AUTHORIZE the Conservation and Development Director, or designee, to execute a Memorandum of Understanding (MOU), with the Association of Bay Area Governments (ABAG), the Alameda County Waste Management Authority, the Sonoma County Regional Climate Protection Authority, the City of Suisun City, the City and County of San Francisco, and the Counties of Marin, Napa, San Mateo and Santa Clara, for the Bay Area Regional Energy Network Program (BayREN).

FISCAL IMPACT:

There is no fiscal impact associated with this MOU. It is anticipated that the Department of Conservation and Development (DCD) will be fully reimbursed for any services provided by DCD for BayREN through a future contract with ABAG. At this time, the scope of services to be provided by DCD has not been determined. Once the scope and cost of such services has been determined, DCD will submit a proposed contract to the Board of Supervisors for consideration.

BACKGROUND:

The California Public Utilities Commission (CPUC) has approved funding

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: 01/08/2013 ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 8, 2013

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: Carrie Del Bonta, Deputy

Contact: 925-674-7722

cc:

BACKGROUND: (CONT'D)

for regional energy networks (RENs) in California. RENs are partnerships between utility providers regulated by the CPUC and local government agencies. The purpose of RENs is to utilize the local community knowledge and relationships of local government agencies to promote energy efficiency programs and services being offered by utility providers.

ABAG submitted a proposal to the CPUC to form BayREN. A modified version of ABAG's proposal has been approved by the CPUC. BayREN is a collaborative partnership between ABAG and nine counties in the Bay Area region, including Contra Costa County, to provide energy efficiency services within the Bay Area. These services will include education and outreach to the public, training for private contractors and public agency staff, and financial incentives for property owners to construct energy efficiency improvements to their property. The CPUC has allocated over \$26 million for BayREN in calendar years 2013 and 2014.

BayREN will deliver services to promote energy efficiency in the nine county Bay Area region through subprograms in four strategic areas:

1. Single Family Housing
2. Multi-Family Housing
3. Building Codes and Standards
4. Energy Efficiency Financing

ABAG is currently negotiating a contract with Pacific Gas and Electric (PG&E) that will allow ABAG to receive funding for BayREN. PG&E is a utility provider regulated by the CPUC, and is acting as the CPUC's agent for purpose of administering BayREN. Once ABAG has concluded a contract with PG&E, ABAG will negotiate subcontracts with each of the nine participating counties to provide BayREN services.

ABAG has requested that each of the nine counties execute this Memorandum of Understanding (MOU) to define the general roles and responsibilities of ABAG and the counties participating in BayREN.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not be able to participate in BayREN and will not be able to provide energy efficiency services to County residents and property owners.

CHILDREN'S IMPACT STATEMENT:

N/A

ATTACHMENTS

ABAG MOU